SECOND
SUPPLEMENT
TO
ARRANGEMENTS
BETWEEN
DEBTORS AND CREDITORS
UNDER THE BANKRUPTCY ACT, 1861.

BY
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OF LINCOLN'S INN, ESQS., BARRISTERS-AT-LAW.

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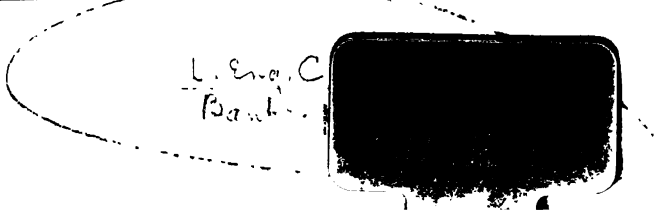

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THE LIQUIDATION ACT, 1868,

AND

THE BANKRUPTCY AMENDMENT ACT, 1868.

31 & 32 VICT. c. 68.

AN ACT TO FACILITATE LIQUIDATION IN CERTAIN CASES OF BANKRUPTCY ARRANGEMENT AND WINDING-UP.

31 & 32 VICT. c. 68.

31*st July*, 1868.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled and by the authority of the same, as follows :—

Preliminary.

Short title.

1. This Act may be cited as The Liquidation Act, 1868.

Interpretation of terms

2. In this Act—

The term "Arrangement" means arrangement, conveyance, or assignment by a debtor, with or for the benefit of his creditors by deed registered under the Bankruptcy Act, 1861 :

The term "Deed" includes any instrument :

The term "Winding-up" means the winding-up of a company, in any manner under the Companies Act, 1862, and any Act amending the same :

The term "Liquidators" means assignees in a bankruptcy, trustees, or inspectors, or other persons acting on behalf of a debtor and his creditors, under an arrangement, or official, or other liquidators in a winding-up.

Extent of Act.

3. This Act shall not extend to Scotland or Ireland.

Application of Act.

4. This Act shall have effect in the following cases only :—

(1.) In case of bankruptcy, where the adjudication has been made before the passing of this Act, or a deed of arrangement has been registered before the passing of this Act, and adjudication of bankruptcy supervenes before the completion of the liquidation under the deed.

(2.) In case of arrangement, where the deed has been registered before the passing of this Act.

(3.) In case of winding-up where proceedings are pending at the passing of this Act.

31 & 32 VICT. c. 68.

Division of Assets in Specie.

Power to prepare and file scheme.

5. If in any case of bankruptcy, arrangement, or winding-up within this Act, it appears to the liquidators that it will be for the benefit of the estate in liquidation that any part of the assets thereof should be divided in specie, or be otherwise disposed of without sale, they may prepare and file in the Court of Chancery a scheme in that behalf.

Provision in scheme as to secured creditors.

6. A scheme may in any case provide that any class of secured creditors shall take in or towards discharge of their claims on the estate the securities held by them at a value to be determined by the Court, or in such manner as the Court shall direct.

Notice of scheme.

7. Notice of filing of the scheme shall be published and given as general orders under this Act direct.

Application for confirmation.

8. At such time after the filing of the scheme as general orders under this Act direct, the liquidators may apply to the Court in a summary way for confirmation thereof.

Confirmation of scheme by Court.

9. After hearing the liquidators and any creditors or other parties whom the Court thinks entitled to hear on the application, the Court, if satisfied that no sufficient objection has been established to the scheme, may confirm the scheme with or without alteration or addition.

Effect of scheme.

10. The scheme as and when confirmed by the Court, shall be binding and effectual to all intents (any rule of law or equity or course of procedure in any Court notwithstanding), and the liquidators and debtor and others affected by the scheme shall conform with the conditions thereof, and accordingly shall (subject to the directions of the Court) execute and do all deeds and things necessary or proper for transferring or vesting any portion of the assets of the estate in accordance with the scheme.

Regard by Court to wishes of creditors.

11. The Court, in determining on the confirmation of a scheme, and in all proceedings and matters under or relating to a scheme, may have regard to the wishes of the creditors, or of separate classes of creditors, as proved to the Court by any sufficient evidence; and the Court may, if it thinks it expedient for the purpose of ascertaining their wishes, direct meetings of creditors or of classes of creditors to be summoned and held, which meetings shall be regulated in such manner as the Court thinks fit (regard being always had to the value of the debts due to the several creditors and to the nature and amount of their respective securities, if any), and may appoint a person to act as chairman of any such meeting, and to report the result thereof to the Court.

Foreclosure by Notice.

Power for creditors to foreclose by notice.

12. For facilitating the settlement of claims of secured creditors the following provisions shall have effect:—

(1.) In any case of bankruptcy, arrangement, or winding-up within this Act, any person being or claiming to be a creditor on the estate in liquidation, and holding or claiming a security, charge, or lien on the assets of the estate,

may, without suit, give notice in writing to the liquidators and the debtor stating his debt or demand and the security, charge, or lien which he holds or claims, and requiring payment of his debt or demand within a time therein specified, not being less than six months from the delivery of the notice:

(2.) Unless the liquidators within the time specified either comply with the notice or give to the creditor a counter notice to the effect that they dispute his right to the security, charge, or lien held or claimed by him, then from and after the expiration of the time specified the creditor shall be entitled and bound to retain and accept in full and final satisfaction of the debt or demand stated in his notice that portion of the assets on which he holds or claims the security, charge, or lien, and all right and title of the liquidators and debtor therein shall thenceforth be foreclosed:

(3.) The liquidators and debtor shall, at the cost of the estate, execute and do all deeds and things necessary or proper for vesting in the creditor such portion of the assets as aforesaid free from all right of redemption by such liquidators or debtor.

Procedure.

General orders and forms in schedule.

18. General Orders (*a*) for the better execution of this Act, and for the regulation of procedure thereunder, shall be from time to time made by the Lord Chancellor of Great Britain with the advice and assistance of the Lords Justices of the Court of Appeal in Chancery, the Master of the Rolls, and the Vice-Chancellors, or any two of those Judges, and subject to the provisions of any such general orders, and until any such are made, the forms given in the schedule to this Act, or forms to the like effect, may be used for the purposes therein indicated, with such variations as circumstances require, and when used shall be deemed sufficient.

THE SCHEDULE.

FORMS.

I.

NOTICE BY CREDITOR.

The Liquidation Act, 1868.

To A. B. and C. D., being the assignees in bankruptcy [*or as the case may be*] of E. F. of , and to the said E. F.

I [*or* we], the undersigned, being a creditor [*or* creditors] of the above named E. F. to the amount of £ , and holding the following securities, namely, [*here the nature of the securities claimed, and whether legal or equitable, to be fully*

(*a*) No general orders under this section have, to the best of the writers' belief, been issued up to the present time.

stated], do hereby require you (or some or one of you) to pay off my [*or* our] said debt or demand within [*not less than six calendar months*] from the receipt by you of this notice.

Dated this day of

(Signed) G. H.

II.

COUNTER NOTICE BY LIQUIDATORS.

The Liquidation Act, 1868.

To G. H.

We, the undersigned, being the assignees in bankruptcy [*or as the case may be*] of the estate of E. F., do hereby give you notice that we dispute your right to the security, charge, or lien held or claimed by you or a portion of the assets of the estate in respect of the debt or demand of £ claimed by you.

Dated this day of

(Signed) A. B.
C. D.

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31 & 32 VICT. c. 104.

AN ACT TO AMEND THE BANKRUPTCY ACT, 1861.

[31*st July*, 1868.]

WHEREAS it is expedient to amend the Bankruptcy Act, 1861: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

No deed, &c. entered into between a debtor and his creditors relating to debts, &c. shall be as valid, &c. as if they were parties to the same unless conditions herein named shall be observed.

1. No deed or instrument made or entered into between a debtor and his creditors, or any of them, or a trustee on their behalf, relating to the debts or liabilities of the debtor and his release therefrom, or the distribution, inspection, management, and winding-up of his estate, or any of such matters, shall be as valid, effectual, and binding on all the creditors of such debtor as if they were parties to and had duly executed the same, unless, in addition to the conditions to be observed in accordance with the provisions of the Bankruptcy Act, 1861, the following conditions shall be observed; that is to say,

(1.) Together with such deed or instrument there shall be delivered to the Chief Registrar a list showing, to the best of the knowledge, information, and belief of the debtor or other person by whom the list is made, the debts and liabilities of every kind of the debtor, and the times when such debts and liabilities were contracted or incurred, and the considerations for the same, the names, residences, and occupations of his creditors, and the respective amounts due to them, and the securities held by them, and the estimated value of such securities (*a*):

(*a*) See *Drew* v. *Myers*, 19 L. T. N. S. 740. Appendix, No. 491.

(2.) A statement showing, to the best of the knowledge, information, and belief of the debtor or other person by whom the statement is made, the debtor's property and credits, and the estimated value thereof.

The debtor or other person as aforesaid may from time to time, by leave of the Court, add to or amend such list or statement, and every such list, statement addition, and amendment shall be verified by his affidavit, or by that of some other person able to depose thereto; and when any addition or amendment is made to any such list or statement, the affidavit shall contain the reason why such addition or amendment has been rendered necessary, and why the substance thereof was not contained in the original list or statement.

Notice to be given of leaving list &c. in London Gazette, &c., and inspection of list and statements allowed.

2. Notice of the leaving of such list or statement, and of any amendments or additions thereto, shall be given in the *London Gazette*, and in some one or more daily paper or papers circulating in the neighbourhood in which the debtor resides or carries on his business, within such time after such list or statement shall have been left as general orders direct; and any person stating himself in writing to be a creditor of such debtor may, personally or by attorney or agent, inspect the lists or statements, and any additions or amendment, and may, on application in such manner as general orders direct, have a copy thereof or extracts therefrom.

Creditors assenting to composition deed to prove, &c.

3. No creditor shall be reckoned in the computation of the requisite majority in number representing three-fourths in value of the creditors of the debtor executing such deed or instrument unless he proves his debt by affidavit or declaration in the manner and subject and according to the provisions to be prescribed by general orders; and in the computation of the requisite value of such creditors, and for all other purposes of the deed, the amount due to each creditor, after deducting the value of the securities held by him on the debtor's property, shall alone be reckoned (*a*); and notwithstanding anything in the Bankruptcy Act, 1861, the time for the production and leaving of any such deed or instrument at the office of the Chief Registrar as therein provided shall be twenty-eight days from the day of the execution thereof by the debtor, or such further time as the Court may allow (*b*).

Proof to be filed.

4. Every affidavit or declaration of proof by the creditors of such debtor shall be filed with the Chief Registrar within such time as general orders direct, and the filing of every such affidavit shall be entered by the Chief Registrar in a book to be kept by him as filed in the matter of the deed or instrument executed by such debtor; and any person stating himself in writing to be a creditor of such debtor may, personally or by attorney or agent, inspect such book, and also every affidavit or declaration filed in the matter of the deed or instrument executed by the debtor, and may, in such manner as general orders direct, have copies thereof or extracts therefrom.

Power of inspection by creditors.

Provisions for examination of debtor or creditor.

5. Any creditor of a debtor executing any such deed or instrument whose debt shall exceed ten pounds may, at any time after the registration of the deed or instrument, apply for and obtain from the Court a summons requiring such

(*a*) See *Ellis* v. *McCormick*, 4 W. N. 44, Appendix, 492.

(*b*) See *Re White*, 17 W. R. 18, Digest, Nos. 364 and 379: and *Re Thompson*, 17 W. R. 100, Digest, No. 376.

debtor, or any creditor or person stated to be a creditor of such debtor, or any person whom the said Court shall believe to be capable of giving any information concerning the dealings and transactions of the debtor, to appear at the said Court upon a day and time to be named in such summons, and then and there to be examined concerning the dealings and transactions of any such debtor, or dealings and transactions of the creditor so summoned with the debtor, or the debt due or stated to be due from the debtor to such creditor; and such debtor or creditor or other person, as the case may be, shall be bound to attend at the time and place named in the summons, and to submit himself to examination; and at the conclusion of such examination the Court shall determine by whom the whole or any part of the expense of procuring the attendance and of the attendance of the person examined, and of his examination, and of the attendance of all other parties properly attending such examination, shall be borne, whether by the creditor procuring the summons, or by the person examined, or by the debtor, or by the trustees or inspectors of his estate, either personally or out of the estate of the debtor, or by the estate of the debtor, or otherwise; and an order shall be drawn up by the Court in accordance with such determination, and be enforced against the parties bound by such order in the same manner that orders of the Court of Bankruptcy are enforced; but nothing in this section shall take away or abridge any jurisdiction or authority belonging to the Court independently thereof.

Notice to debtor and trustees of deed.

6. The creditor procuring such summons shall give notice to the trustees or inspectors (if any) acting under the deed or instrument, and (where the summons is directed to a creditor) to the debtor, of the time and place appointed for the examination. The debtor, trustees, or inspectors shall be at liberty to attend such examination, and to take part therein, subject to the direction of the Court.

In change from bankruptcy to arrangement creditors assenting to prove, &c.

7. In case of a deed of arrangement under section 187 of the Bankruptcy Act, 1861, no creditor shall be reckoned in the computation of the requisite majority in number and value of the creditors of the bankrupt unless he proves his debt by affidavit or declaration in the manner and subject and according to the provisions to be prescribed by general orders; and in the computation of the requisite value of such creditors, and for all other purposes of the deed, the amount due to each creditor, after deducting the value of the securities held by him on the bankrupt's property, shall alone be reckoned.

Description of court to have jurisdiction under deed.

8. The Court which shall have and exercise all jurisdiction given by the Bankruptcy Act, 1861, and this Act, under any deed or instrument made by an arranging debtor, shall, if the debtor is a bankrupt, be the Court having jurisdiction in the bankruptcy, and if he is not a bankrupt, the Court in which a petition by him for adjudication of bankruptcy against himself would at the time of the execution or (in case of registration) of the registration of the deed or instrument be required to be filed; but the Court of Bankruptcy in London may order all or any of the applications under any deed or instrument to be made and prosecuted in any Court, without regard to the district in which the debtor resided or carried on business, or the amount of his debts; provided that any proceeding *bonâ fide* taken in any Court shall not be impeachable by reason of its appearing that the jurisdiction was in some other Court, but the Court in which such proceeding is pending may transmit the papers to the proper Court.

9. The Lord Chancellor shall, with the assistance of two Commissioners, and subject to the provisions of the Bankruptcy Act, 1861, frame general orders for the following purposes:— 31 & 32 Vict. c. 104.

Power to make general orders.

For regulating the several forms of the lists, statements, affidavits, declarations, advertisements, orders, and all other proceedings to be used in all matters under this Act;

For the reception and custody of all documents required to be produced, left, or filed in accordance with this Act, and the inspection of such documents by any creditors or person entitled to inspect the same, and for the delivery of copies thereof;

For regulating the duties of the various officers of the Court of Bankruptcy in accordance with this Act;

For regulating the fees payable for matters done under this Act:

And generally for carrying this Act into effect:

And the Lord Chancellor, with such assistance, may from time to time amend, alter, vary, or annul any of such general orders.

Notices as to deeds, &c.

10. Section two hundred and two of the Bankruptcy Act, 1861, shall extend and apply to notices concerning deeds or instruments made by arranging debtors.

Affidavits, warrants, &c.

11. In addition to the officers and persons enumerated in section 207 of the Bankruptcy Act, 1861, affidavits, declarations, or affirmations required to be sworn or made in relation to any matter under that Act or this Act may be sworn, made, or taken before such of the officers or clerks in the Court of Bankruptcy as the Lord Chancellor by order shall from time to time appoint for the purpose; and every order, warrant, certificate, or proceeding in the Court of Bankruptcy required by law to be signed by a Commissioner may, in lieu of being so signed, be under the hand of a registrar and the seal of the Court.

Penalty on persons giving false affidavit.

12. Any person who shall, upon any examination upon oath or affirmation, or in any affidavit, deposition, or declaration, or solemn affirmation, authorised or directed by this Act, wilfully and corruptly give false evidence, or wilfully and corruptly swear or affirm anything which shall be false, being convicted thereof, shall be liable to the penalties of wilful and corrupt perjury.

As to payment, &c. of fees.

13. The provisions with respect to the payment and appropriation of fees contained in or incorporated with the Bankruptcy Act, 1861, shall be incorporated with this Act, and apply to the fees to be taken and received under the provisions of this Act.

Limit of Act.

14. This Act shall not extend to Scotland or Ireland.

Commencement of Act.

15. This Act shall commence and take effect on the eleventh day of October One thousand eight hundred and sixty-eight, and shall be construed together with so much of the Bankrupt Law Consolidation Act, 1849, the Bankruptcy Act, 1854, and the Bankruptcy Act, 1861, as is in force, as one Act, and may be cited for all purposes as The Bankruptcy Amendment Act, 1868.

Short title.

THE BANKRUPTCY AMENDMENT ACT, 1868.

GENERAL ORDERS

MADE PURSUANT TO "THE BANKRUPTCY AMENDMENT ACT, 1868."

(31 & 32 VICT. CAP. 104.)

12th day of October, 1868.

IT is ordered as follows; that is to say:

From and after the date of these orders, the general order bearing date the 22nd day of May, 1862, relating to deeds left for registration, and the general order bearing date the 23rd day of July, 1862 (*a*), shall be and the same are hereby rescinded; and in lieu thereof it is ordered as follows:—

1. Together with every deed or instrument left on or after the 12th day of October, 1868, at the office of the Chief Registrar, for the purpose of being registered under section 192 of the Bankruptcy Act, 1861, and in addition to the affidavit or certificate required to be delivered to the Chief Registrar, under the fifth condition of the said section, there shall be delivered to the Chief Registrar a copy of such deed or instrument, certified to be a true copy by the attorney or solicitor attesting the execution of the same by the debtor, or by some other attorney or solicitor acting on behalf of the party requiring such registration, and also, and as nearly as may be in the forms set out in that behalf respectively in the schedules A 1, A 2, and B to these orders annexed, a list of the debts and liabilities of the debtor, and a statement showing the debtor's property and credits, and the estimated value thereof, as required by the Bankruptcy Amendment Act, 1868; and in cases of partnership there shall be separate lists and statements of the debts and liabilities, property and credits, of the partnership, and of each partner.

2. The said list and statement shall be accompanied by an affidavit made by the debtor, or some other person able to depose thereto, verifying the same, which affidavit shall be as nearly as may be in the form set out in schedule C to these orders annexed.

3. Every order for leave to add to or amend the said list or statement, together with the addition or amendment made in pursuance of such order, and an affidavit made by the debtor, or some other person able to depose thereto, verifying such addition or amendment, and stating the reason why such addition or amendment has been rendered necessary, and why the substance thereof was not contained in the original list or statement, shall be delivered to the Chief Registrar within four days from the date of such order, or such further time as the Court shall direct,

(*a*) See these orders respectively, text p. 23 note, and Addenda to original volume, p. xlv.

and every such addition or amendment shall show the date of the order allowing the same, and by what Court the order was made, and the said affidavit shall be as nearly as may be in the form set out in schedule D to these orders annexed.

4. The notice required by the 2nd section of the Bankruptcy Amendment Act, 1868, to be given of the leaving of such list or statement, and of any amendments or additions thereto, shall be published, by the party requiring the registration, in the *London Gazette* within four days, and in one or more daily papers circulating in the neighbourhood in which the debtor resides or carries on his business, within seven days after such list or statement, amendment, or addition, shall have been left with the Chief Registrar.

5. Any assenting creditor of a debtor executing a deed of arrangement under s. 192 of the Bankruptcy Act, 1861, may prove his debt by affidavit or declaration in the forms set out in schedules E and F respectively to these orders annexed, and every such affidavit or declaration shall be left with the Chief Registrar, together with the written assent or approval of every such creditor, at the same time as the copy deed or instrument directed to be left as aforesaid, or at such other time as the Court by order may allow, and shall be filed forthwith.

6. Any assenting creditor of a debtor executing a deed of arrangement under s. 192 of the Bankruptcy Act, 1861, may prove his debt by the affidavit, or declaration, of a clerk or other person in his employment, and all bodies politic and public companies incorporated, or authorised to sue or bring actions, may prove by the affidavit or declaration of an agent: provided that every such clerk, person, or agent, shall in his affidavit or declaration state that he is duly authorised by the creditor or company to prove the debt, and that it is within his own knowledge that the debt was contracted, and for the consideration in the affidavit or declaration seated, and that to the best of his knowledge and belief the debt still remains unpaid and unsatisfied; and the said affidavit or declaration may be in the forms set out in schedules G and H to these orders annexed, or as near thereto as may be.

7. Any person, stating himself in writing to be a creditor of the debtor, may personally, or by attorney or agent, inspect the said copy deed and the said list or statement, and every addition or amendment thereto, and the said affidavits or declarations of debt and assents by the creditors, upon application at the office of the Chief Registrar, in the form set out in schedule J. to these orders annexed, and upon payment to the Chief Registrar, by bankruptcy stamp, of the fee of 1s. for each such application, and may have an office copy of, or extract from, every such copy deed, list, statement, addition, amendment, affidavit, or declaration, and assent, upon paying for the same at the like rate as for office copies of proceedings in bankruptcy.

8. A creditor applying for a summons under s. 5 of the Bankruptcy Amendment Act, 1868, shall prove his debt by affidavit or declaration, in the forms set out in schedules E and F respectively to these orders annexed, and such proof of debt, together with a written statement of the grounds upon which such application is made, shall be filed with the proceedings.

9. In cases where the production of a registered deed, or certified copy thereof, or of any proceedings thereunder, is required for the purpose of any sitting to be held, or application to be made, under such deed, the person requiring such production shall give two clear days' notice in writing to the Chief Registrar at the office in Quality Court, Chancery Lane, stating the day and hour appointed for

such sitting or application, and the Court or officer before whom it is to be held or made, and specifying the documents the production of which is required; and such Court shall have the custody of the documents produced until the sitting or application is concluded, whereupon the same shall be transmitted, together with any examinations taken, or affidavits used at such sitting or application, to the said office in Quality Court, where the same shall be forthwith filed.

10. The memorandum of registration required by the Bankruptcy Act, 1861, to be written on the face of every deed, on being registered, shall, in addition to the statement of the day and hour at which the same was brought into the office for registration, specify under what section of the same Act such deed was registered; and such memorandum, together with the other forms given in the 19th of the general orders made under the Bankruptcy Act, 1861, shall be intituled under the Bankruptcy Amendment Act, 1868, as well as the Bankruptcy Act, 1861.

11. A copy of the memorandum of registration written on the face of every deed or instrument shall be made on the face of the copy of the deed or instrument delivered to the Chief Registrar.

12. A creditor of a debtor executing a deed of arrangement under s. 187 of the Bankruptcy Amendment Act, 1861, [*sic*] may prove his debt by affidavit or declaration in the forms set out in schedules E and F respectively to these orders annexed, and the authorised clerk, servant, or agent of a creditor or company may prove the debt of such creditor or company in the forms set out in schedules G and H to these orders annexed, or as near as may be, and such affidavit or declaration shall be filed with the proceedings four days before the Court by order makes a declaration of the complete execution of such deed.

CAIRNS, C.
EDWD. HOLROYD, Senior Commissioner.
THOS. EWING WINSLOW.
JAMES BACON.

SCHEDULES TO THE FOREGOING ORDERS.

SCHEDULE A (1).

THE BANKRUPTCY AMENDMENT ACT, 1868.

Form of the List to be delivered to the Chief Registrar, pursuant to Section 1 of the Act.

A LIST showing the Debts and Liabilities of [*here insert Name, Description, and Residence of Debtor*], amounting to Ten Pounds and upwards, and the Times when such Debts and Liabilities were contracted or incurred, and the Considerations for the same; and the Names, Residences, and Occupations of his [*or "their"*] Creditors, and the respective Amounts due to them; and the Securities held by them, and the estimated Value of such Securities.

No.	Names, Residences, and Occupations of the Creditors.	If assenting.	Secured.		Unsecured.	Nature of Security, and date when given.	Time when the Debt or Liability was contracted.	Consideration for the Debt or Nature of Liability.
			Amount.	Value or estimated Value of the Security to be deducted.	Amount.			
			£ s. d.	£ s. d.	£ s. d.			
1	Anderson, John, 5 Fore Street, London, brush-maker	Assenting	1200 0 0	450 0 0	750 0 0	Mortgage dated 1st July, 1868, of Two Freehold Houses at Hendon, for securing £600. The estimated value of the security is £450	1st April, 1868	Money lent.
2	Hopkinson, Joseph, 65 Cornhill, London, jeweller	..	..	..	360 0 0	.. .. ..	Between 4th June, 1864, and 6th October, 1868	Goods sold.
3	Watson, Henry, 45 Strand, London, grocer	Assenting	..	..	200 0 0	.. .. ..	12th August, 1867	Indorsement of Bill of Exchange

No. of Creditors . .	36	Amount of debts* . .	£ ⅓)24,000
Assenting. .	20		6,000
Not Assenting.	16		3
	36		⅗ths £18,000

Amount of debts* of creditors assenting . .	£ 21,300
⅗ths required	18,000
	£ 3,300

* Computing only the amount due after deducting the value of securities held on the debtor's property.

SCHEDULE A (2)

A LIST showing the Debts and Liabilities of the above-named [Debtor] under Ten Pounds, and the Times when such Debts and Liabilities were contracted or incurred, and the Considerations for the same; and the Names, Residences, and Occupations of his Creditors, and the Respective Amounts due to them, and the Securities held by them, and the estimated Value of such Securities.

No.	Names, Residences, and Occupations of the Creditors.	Secured.		Unsecured.	Nature of Security, and Date when given.	Time when Debt or Liability contracted.	Consideration for the Debt or Nature of Liability.
		Amount.	Value or estimated Value of the Security to be deducted	Amount			
				£ s. d.			
1	Smith, James, 200 London Wall, tailor	..	..	9 17 6	.. .. ..	4th June, 1868	Goods sold.
2	Robinson, Henry, 1 Lime Street, Gravesend, baker	..	..	5 0 0	.. .. ..	10th July, 1860	Money lent.
	Jones, Samuel, 150 Chancery Lane, law-writer	..	..	6 6 0	.. .. ..	Between 25th March and 25th April, 1868	Work done.

Number of Creditors . . . . . 22 Amount of Debts . . £112 18s. 6d.

SCHEDULE B.

THE BANKRUPTCY AMENDMENT ACT, 1868.

Form of the Statement to be delivered to the Chief Registrar, pursuant to Section 1 *of the Act.*

STATEMENT of Property and credits of (*A.B.*) of on the day of 186 , being the date of the execution by him of a Deed of Arrangement for the benefit of his creditors.

———	Charges and Incumbrances.	Estimated Value, less Amount of Charges and Incumbrances.
	£ s. d.	£ s. d.
Freehold, copyhold, and leasehold property, with local description, names of tenants, and annual rent of the same		
Reversionary or expectant interests in real estate		
Cash, bills of exchange, promissory notes, or securities of any description		
Book debts		
Household goods, furniture, and household effects		
Stock in trade		
Income arising from salaries, fees, annuities, pensions, or other emoluments		
Policies of insurance on the life of the above-named (*A. B.*), or in which he has any interest		
Personal property of any other description, in possession		
Reversionary or expectant interests in personal estate of any description		

SCHEDULE C.

THE BANKRUPTCY AMENDMENT ACT, 1868.

Affidavit verifying List and Statement, under Section 1.

I, *A. B.*, of make oath and say as follows:—

I have read the list and statement now produced to me, and marked [M] and [N] respectively, and I say that the said list contains, to the best of my knowledge, information, and belief, a full, true, and accurate account of my debts and liabilities of every kind [*or, if made by any other person,* "of the debts and liabilities of,"—*here insert name and description of the debtor*], and the times when such debts and liabilities were contracted or incurred, and the considerations for the same, the names, residences, and occupations of my [*or* "his] creditors, and the respective amounts due to them, and the securities held by them, and the estimated value of such securities, as required by the Bankruptcy Amendment Act, 1868, and that the said statement contains, to the best of my knowledge, information, and belief, a full, true, and accurate account of all my property and credits [*or, if made by any other person,* "of the property and credits of the above-named (*debtor*)"], and the estimated value thereof, as required by the Bankruptcy Amendment Act, 1868.

Sworn, &c.

Before me.

NOTE.—*If the affidavit is made by any person other than the debtor, add,* "And I am able to make this deposition because" [*stating the circumstances under which the deponent has become acquainted with the affairs of the debtor*].

SCHEDULE D.

THE BANKRUPTCY AMENDMENT ACT, 1868.

Form of Affidavit verifying Addition to or Amendment of the List or Statement under Section 1.

I, *A. B.*, of make oath and say as follows:—

I have read the paper-writing now produced to me, and marked [C], and I say that the said paper-writing, together with the list marked [M], referred to in my former affidavit sworn in reference to this matter on the day of , contains, to the best of my knowledge, information, and belief, a full, true, and accurate account of my debts and liabilities of every kind [*or, if made by any other person* " of the debts and liabilities of " *the debtor*], and the times when such debts and liabilities were contracted or incurred, and the considerations for the same; the names, residences, and occupations of my [*or* his] creditors, and the respective amounts due to them, and the securities held by them, and the estimated value of such securities, as required by the Bankruptcy Amendment Act, 1868; and I say that the reason why the addition [*or* amendment] contained in the said paper-writing marked [C] was rendered necessary, and why the substance thereof was not contained in the said list marked [M], was [*here state the reason to the best of the deponent's knowledge and belief*].

Sworn, &c.

Before me.

NOTE 1.—*If the affidavit be made by any person other than the debtor, add,* " And I am able to make this deposition because". [*state the circumstances under which the deponent has become acquainted with the affairs of the debtor*].

NOTE 2.—*If the " statement" be added to or amended, the affidavit of verification may be in the above form, with the necessary alterations.*

SCHEDULE E.

THE BANKRUPTCY AMENDMENT ACT, 1868.

Form of Affidavit by Creditor under a Deed.

In the matter of a deed of arrangement between *A. B.*, of [*insert here name and description of debtor*] and his creditors.

I, *C. D.*, of in the county of [*add description of creditor*], make oath and say, that the above-mentioned *A. B.* [*naming the debtor*] is justly and truly indebted to me in the sum of £ for [*state consideration of the debt and time when contracted, as* " for goods sold, delivered by me to the said *A. B.* between the day of 18 and the day of 18 ," *or as the case may be*], and that I have not, nor hath any person on my behalf or for my use, had or received any manner of satisfaction or security whatever for the said sum of £ or any part thereof [*if the creditor holds any securities add,* " save and except," *specifying the securities as* " a Bill of Sale bearing date the day of 18 ," *or as the fact may be*].

Sworn, &c.

Before me.

SCHEDULE F.

THE BANKRUPTCY AMENDMENT ACT, 1868.

Form of Declaration of Proof of Debt by Creditor under a Deed.

In the matter of a deed of arrangement between *A. B.*, of and his creditors.

I, *C. D.*, of [*here insert description of creditor*] do solemnly declare, that the statement of the debt and of the account [*if any*] between me and the above-named *A. B.* , hereunto annexed, is a full, true, and complete statement of account between me and the said *A. B.* and that the debt amounting to £ thereby appearing to be due from the said *A. B.* to me was contracted on the day of [*or* between the day of 18 and the day of 18], and still is justly due and owing, and that I have not, nor hath any person on my behalf or for my use, received any satisfaction or security whatsoever for the said debt or any part thereof, save and except [*as in an affidavit of debt*].

Declared, &c.

Before me.

SCHEDULE G.

THE BANKRUPTCY AMENDMENT ACT, 1868.

Form of Affidavit by Clerk or Servant or Agent of Creditor under a Deed.

In the matter of a deed of arrangement between *A. B.*, of [*here insert name and description of debtor*] and his creditors.

I, *C. D.*, of [*here insert name and description of deponent*] make oath and say that I am the clerk of [*or* "employed in the capacity of by"] *E. F.*, of [*or, if a company or other public body be the creditor*, "that I am the agent of" (*describing the body or company*)] and that the above-mentioned *A. B.* [*naming the debtor*] is justly and truly indebted to the said *E. F.* [*or* "to the said company" (*describing it*)] in the sum of £ for [*state consideration of the debt*], and that to the best of my knowledge and belief the said [creditor *or* company] has not, nor has any other person on his [*or* their] behalf, or for his [*or* their] use, had or received any manner of satisfaction or security whatever for the said sum of £ or any part thereof [*if the creditor holds any securities add*, "save and except," *&c., as in schedule E.*]; and I further say that I am duly authorised by the said [creditor *or* company] to prove the said debt, and that it is within my own knowledge that the said debt was contracted, and for the consideration in this my affidavit stated, and that to the best of my knowledge and belief the same debt still remains unpaid and unsatisfied.

Sworn, &c.

Before me.

SCHEDULE H.

THE BANKRUPTCY AMENDMENT ACT, 1868.

Form of Declaration of Proof of Debt by Clerk or Servant or Agent of Creditor under a Deed.

In the matter of a deed of arrangement between *A. B.* of [*here insert name and description of debtor*] and his creditors.

I, *C. D.*, of [*here insert name and description of deponent*] do solemnly declare that I am the clerk of [*or* "employed in the capacity of by"] *E. F.*, of [*or if a company or other public body be the creditor*, "that I am the agent of" (*describing the company or body*)], and that the statement of the debt [*and* "of the account" (*if any*)] between the said *E. F.*, [*or the said company or public body* (*describing it*)] and the above-named *A. B.*, hereunto annexed, is a full, true, and complete statement of account between the said [creditor *or* company] and the said *A. B.*, and that the debt amounting to £ thereby appearing to be due from the said *A. B.* to the said [creditor *or* company] was contracted on the day of [*or* between the day of , and the day of], and still is justly due and owing, and that to the best of my knowledge and belief the said [creditor *or* company] has not, nor has any other person on his [*or* their] behalf, or for his [*or* their] use, had or received any manner of satisfaction or security whatever for the said sum of £ , or any part thereof [*if the creditor hold any securities add*, "save and except," *&c., as in schedule E*]; and I further say that I am duly authorised by the said [creditor *or* company] to prove the said debt, and that it is within my own knowledge that the said debt was contracted, and for the consideration in this my declaration stated, and that to the best of my knowledge and belief the same debt still remains unpaid and unsatisfied.

Declared, &c.

Before me.

SCHEDULE J.

THE BANKRUPTCY AMENDMENT ACT, 1868.

Form of Application by or on behalf of Creditor to Inspect or take Copies.

In the matter of a deed of arrangement between *A. B.*, of [*insert name and description of debtor*] and his creditors.

SIR,

I, being a creditor [*or "the Attorney" or "Agent" of C. D., being a creditor*] of the above-named *A. B.*, desire to inspect the copy deed and proceedings in this matter, and require an office copy of [*specifying the documents required*] to be made for me.

I am, Sir,

Your obedient, &c.

Signature of applicant.

Address of applicant.

To the Chief Registrar.

CAIRNS, C.
EDWD. HOLROYD, Senior Commissioner.
THOMAS EWING WINSLOW.
JAMES BACON.

SECOND

SUPPLEMENT TO DIGEST

OF THE CASES ON THE 192ND AND FOLLOWING SECTIONS OF THE BANKRUPTCY ACT, 1861, AND THE BANKRUPTCY AMENDMENT ACT, 1868.

I.

CASE UPON THE CONDITION HELD TO BE IMPLIED BY THE 192ND SECTION, THAT THE PROVISIONS OF THE DEED MUST BE EQUAL AND REASONABLE, IN WHICH THE CONDITION HAS BEEN HELD NOT TO HAVE BEEN COMPLIED WITH.

UNREASONABLE PROVISIONS.

(a) *Trust Deed.*

354. By a deed purporting to be within s. 192 of the Bankruptcy Act, 1861, traders assigned all their estate and effects to trustees, for the benefit of all the creditors, with power to the trustees to call in and compound all debts, to sell all or any of the stock, works, &c., and in the meantime to carry on the business of the debtors for such period as they should think fit; and there was a clause that "the trustees should be indemnified out of the estate of the debtors, or otherwise by the creditors, in proportion to the amount of their respective debts, against and in respect of all transactions and personal engagements, matters, and things whatsoever, which they shall lawfully do or cause to be done, or enter into or order or direct in and concerning the management or conduct of the business."

Trust Deed.

Held, that as this clause imposed a personal liability on the non-assenting creditors beyond the loss of their debts, it was ultra vires, and the deed was not within s. 192. *Wigfield* v. *Nicholson*, L. R. 3 Q. B. 450.

The following cases in division No. I. in the Original Digest have been since reported in the following places, viz. :—

No. 4, 6, 26. *Coles* v. *Turner*, 18 C. B. N. S. 736.

„ 23. *Lyne* v. *Wyatt*, 18 C. B. N. S. 593.

„ 24. *Ex parte Cockburn, In re Smith*, 3 De G. J. & S. 175.

II.

REASONABLE PROVISIONS.

CASES UPON THE CONDITION HELD TO BE IMPLIED BY THE 192ND SECTION, THAT THE PROVISIONS OF THE DEED MUST BE EQUAL AND REASONABLE, IN WHICH THE CONDITION HAS BEEN HELD TO HAVE BEEN COMPLIED WITH.

(*a*) *Trust Deed.*

Trust Deed.

355. By a deed of January, 1867, for the arrangement and distribution of a debtor's estate, after reciting that by a deed of December, 1865, the debtor's creditors had granted him a letter of licence to carry on his business of a colliery proprietor under the direction of inspectors, and that the inspectors might retain or require payment out of the estate of all costs, charges, and expenses, in anywise relating thereto, and might raise any sum of money by way of mortgage of the colliery, and apply the money (amongst other things) in paying the costs, charges, and expenses incurred in carrying on the business, and in raising the money, the debtor assigned his estate to a trustee to get in and realize the same, and after payment of the costs of the arrangement of 1865 and all costs, charges, and expenses thereinbefore recited or referred to as having been incurred by the inspectors, or with their sanction, for the benefit of the debtor's estate, to pay the residue rateably amongst the debtor's creditors.

Held by the Court of Queen's Bench, and on appeal by the Exchequer Chamber, that the provision for the payment of the costs incidental to carrying on the business and all expenses incurred under the deed of 1865, in priority to the debts of the other creditors, did not render the deed of 1867 invalid; on the grounds, in the view of the former Court, that either the inspectors had a lien for their expenses, &c., under the deed of 1865, or there might be a very reasonable doubt in the matter, and in the latter case the majority of the creditors might well consider it best for the general body of creditors not to litigate the matter, but to provide for paying the inspectors their expenses in priority to the other creditors; and on the grounds, in the view of the latter Court, that the provisions in question were all reasonable provisions, and such as the creditors at large ought themselves to have assented to. *Fitzpatrick* v. *Bourne*, L. R. 3 Q. B. 233, 446. See *Ex parte Pilkington, In re Webster*, L. R. 3 C. A. 404. *Infra*, No. 469.

See also *infra*, No. 358.

(*b*) *Composition Deeds.*

Composition Deeds.

356. A deed under the Bankruptcy Act, 1861, s. 192, is not to be deemed unreasonable on the ground that it postpones the payment of the debts for

two years, although it gives no benefit to the creditors, except the covenant of the debtor. REASONABLE PROVISIONS.

Semble, a deed which is assented to by the required majority of creditors cannot be unreasonable, unless it gives them some advantage over the minority. Composition Deeds.

The omission of a debt from the schedule is not a ground on which the Court of Chancery can hold a deed to be invalid, if the requirements of the 192nd section of the Bankruptcy Act, 1861, are satisfied.

The question of compliance with the General Order of the 22nd of May, 1862, is not one to be considered by a Court of Equity. *In re Richmond Hill Hotel Company, Ex parte King*, L. R. 4 Eq. 566.

The facts which led to this decision were briefly these, viz.:—That, shortly before a company was wound up, a shareholder executed a deed of arrangement with his creditors, which contained no *cessio bonorum*, but only covenants by the creditors that they would not enforce payment within two years, and by the debtor that he would pay in full at the expiration of that period. The debtor was at that time liable for two calls made by the company, but he did not include them in the schedule sent in to the Registrar, and another call was subsequently made by the official liquidator.

The Lord Justice Cairns on appeal, held (affirming the decision of the Vice-Chancellor Wood), that the omission of the debts from the schedule was not a ground on which the Court of Chancery could hold the deed to be invalid; that there being no inequality as between creditors, and no fraud, the Court would not judge of the reasonableness of the arrangement as between the debtor and his creditors; and that, so far as related to the calls that were due at the date of the deed, the official liquidator was bound by the deed. But he also held (reversing the decision of the Court below), that, having regard to the frame and provisions of the deed, which only applied to debts actually due, the official liquidator might proceed against the shareholder for the subsequent calls. *In re Richmond Hill Hotel Company, Ex parte King*, L. R. 3 C. A. 10. See *Ex parte Wilmot, In re Thompson*, L. R. 2 C. A. 795, *Infra*, No. 394.

357. By a deed under s. 192 of the Bankruptcy Act, 1861, it was agreed that a composition of 7s. 6d. in the pound should be accepted by the creditors, in full satisfaction of their respective debts, the composition to be payable by three equal instalments, at four, eight, and twelve months from the registration of the deed, the payment to be secured by promissory notes of the debtor and a surety; and there was a covenant by the debtor with the creditors executing the deed to give them promissory notes accordingly, and a similar covenant with a trustee on behalf of the non-executing creditors; and in consideration of the premises the creditors covenanted not to sue for their original debt, this provision to be pleadable in bar as a release if they did; provided that if the promissory notes should not be duly tendered to any creditor, the provision as to not suing should be void as against such creditor.

Held, that the deed was neither unequal nor illusory, but was valid

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under s. 192. *Sowry* v. *Law*, L. R. 3 Q. B. 281. See *Ex parte King*, *ante*, No. 356.

Composition Deeds.

358. By a deed, under the Bankruptcy Act, 1861, with the requisite consents, &c., between the debtors of the first part, P., a creditor, of the second part, and the other creditors of the third part, the debtor covenanted to pay P. a composition of 5*s.* in the pound by two equal instalments at four and twelve months, and the debtor and P., as surety, each covenanted with the other creditors to pay them a composition of 5*s.* in the pound on their respective debts by two instalments as above. The debtor assigned all his effects to P., upon trust to apply the proceeds towards the payment of the above composition, and afterwards towards payment of the remaining 15*s.* in the pound of P.'s debt; it being stipulated that P. should have the advantage of this security for the remainder of his debt in consideration of his undertaking the liability of suretyship; and should stand possessed of the surplus, if any, in trust for the debtor. It was also agreed that if P., as such surety, should arrange with any creditor to make an immediate payment of the composition payable to him with a deduction by way of discount, P. should be at liberty to repay himself out of the trust moneys the whole amount of the composition payable to such creditor. In consideration of the premises, the parties of the second and third parts released their respective debts:—

Held, that the deed was valid and binding on non-assenting creditors under s. 192: for that there was no such inequality in favour of P. as vitiated the deed, as the purchase of his suretyship must be taken to be an advantageous bargain for the creditors at large; and that the clause as to payment in advance was not objectionable, as it must be assumed that P. would only avail himself of it when he could do so consistently with carrying out the trusts. *Bissell* v. *Jones and Others*, L. R. 4 Q. B. 48.

359. By a deed intended to operate under the 192nd section of the Bankruptcy Act, 1861, the debtor and a surety covenanted to deliver to the creditors on the day of the date of the deed promissory notes signed by the debtor and a surety for a composition upon their debts; and the creditors, in consideration of the premises, released the debtor from all debts due to them. The release was followed by the following clause: "Provided that if the said debtor and the surety shall not, within two calendar months from the 17th June, 1867, make and deliver the said promissory notes unto the said creditors according to the true intent and meaning of these presents, then and in such case these presents shall thereupon become absolutely void and of no effect, and the said creditors respectively shall be restored to their original rights, as if these presents had not been made, provided that the said creditors shall personally or otherwise apply for their said notes." The defendant did not deliver the notes either on the day of the date of the deed or within two months after the 17th June, 1867, but the plaintiffs never personally or otherwise applied for them.

It was held, that there was nothing unreasonable in the proviso with respect to the application for the notes. *Solomon* v. *Laverick*, 17 L. T.

N. S. 545. See *Blumberg* v. *Rose*, 4 H. & C. 311: L. R. 1 Exch. 232: *supra*, No. 45. REASONABLE PROVISIONS.

360. The following clause in a deed of composition under the Bankruptcy Act, 1861, s. 192, was held by the Court of Common Pleas unobjectionable:— "Deferred, contingent, or other debts or claims which would have been proveable against the estate of the debtor in bankruptcy, shall be deemed debts within the meaning of these presents, and the said composition dividend shall be payable, and the said promissory notes shall be made in respect of such amount as would have been so proveable." *Horsfall* v. *The Swan Bank and Brick Works Company (Limited)*, 16 W. R. 934: 18 L. T. N. S. 409. Composition Deeds.

(c) *Deed of Inspectorship.*

361. A deed of inspection, under s. 192 of the Bankruptcy Act, 1861, provided:—1. That the inspectors should from time to time pay a dividend to the creditors, and should retain a sufficient sum for the purpose of paying a rateable dividend to any creditor who should not have executed the deed, and should pay such dividend to such creditor upon his request in writing. 2. That it should be lawful for the inspectors to authorise or require the debtor to enter into or undertake any new contract in the way of his trade or business, which the inspectors might think likely for the benefit of the creditors. 3. That if any creditor should, whilst the deed was in force, commence any action against the debtor, the deed should have the same force as an order in discharge in bankruptcy, and should accordingly be pleadable in bar. And the creditors covenanted that when the inspectors should, in writing, certify that the liquidation provided by the deed had, as far as possible, been concluded, or that the debtor had made a conveyance of his estate and effects, according to his covenant in that behalf, then such certificate should be conclusive evidence of the facts therein certified, and upon the giving of such certificate the debtor should be absolutely released from all his debts:— Deed of Inspectorship.

Held, 1. On the authority of *Hernulewicz* v. *Jay* (6 B. & S. 697; *supra*, No. 53), that there was no inequality between the assenting and non-assenting creditors. 2. That the deed being one of inspection, for the winding-up of the estate, it might be necessary to enter into new contracts, and the deed was therefore not beyond the scope of the section; and on the authority of *Re Richmond Hill Hotel Company* (Law Rep. 4 Eq. 566; Law Rep. 3 C. A. 10, *supra*, No. 356), the Court would not decide as to the reasonableness of arrangements assented to by a majority of creditors. 3. On the authority of *Corner* v. *Sweet* (Law Rep. 1 C. P. 456; *supra*, No. 184), that the deed was pleadable in bar as a defence to the action. *Bailey and Others* v. *Bowen*, L. R. 3 Q. B. 133.

And see further cases in which deeds under the 192nd section have been held valid or invalid in respect of the matters hereinbefore adverted to. *Infra*, Nos. 402 to 419.

REASONABLE PROVISIONS.

The following cases in Division No. II., in the Digests, Original and Supplemental, have been since reported in the following places, viz.:—

No. 30. *Coles* v. *Turner*, 18 C. B. N. S. 736.
,, 38. *Haselgrove* v. *House*, 6 B. & S. 975.
,, 53. *Hernulewicz* v. *Jay*, 6 B. & S. 697.
,, 212. *Re The Richmond Hill Hotel Company (Limited)*, *King's Case*, L. R. 4 Eq. 566, on app. L. R. 3 C. A. 10.
,, 213. *Peel* v. *Webster*, 36 L. J. N. S. Exch. 188.

III.

CASES ON THE 1ST CONDITION OF THE 192ND SECTION OF THE BANKRUPTCY ACT, 1861, AND THE BANKRUPTCY AMENDMENT ACT, 1868, S. 3.

SECTION 192.

1st condition and Bankruptcy Amendment Act, 1868, s. 3.

362. A debtor executed an inspectorship deed by which it was provided that, in the case of debts due from him on negotiable instruments, either the original holder, or the present or ultimate holder, or any intermediate indorsers, might execute or assent to the deed, but that the ultimate holder should be deemed the creditor and party to the deed. The debtor was liable on acceptances on bills drawn by S., who was returned as an assenting creditor in respect of them; but, in fact, S. was, at the time of the registration, the holder of only a small part of those bills, the rest being in the hands of his bankers, who had discounted them. After the registration all the bills came into the hands of S.:—

Held, that the bankers were the proper parties to have been returned as creditors in respect of the bills in their hands, and that S. had no right to assent in respect of his contingent liability as drawer; and, as the striking out of these bills turned the scales of assents and dissents, the deed was void.

The bills having been given in respect of a speculation the result of which was not ascertained, it was held that S. could not be deemed a creditor in respect of his estimated loss in the transaction.

The registration, not the execution, of the deed is the period at which the relative position of the creditors is to be ascertained. *Ex parte Petrie*, *In re Petrie*, L. R. 3 C. A. 232.

As to this last point, however, see the cases cited above, No. 342, to which add, *Ex parte Spurr*, *Re Courtenay*, 16 W. R. 63; *Porter* v. *Kirkus*, L. R. 2 C. P. 590; *Williams* v. *Cadbury*, L. R. 2. C. P. 453; *Selby* v. *Greaves*, L. R. 3 C. P. 594, Nos. 409, 255, 256, 398.

363. The majority of assenting creditors required by the Bankruptcy Act, 1861, s. 192, for the purpose of making a deed under that section binding on dissenting creditors must be constituted by creditors who have assented before registration of the deed under the fifth clause of that section. *Ex parte Raistrick*, *In re Nuttall*, 37 L. J. N. S. Bcy. 12.

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1st condition, and Bankruptcy Amendment Act, 1868, s. 3.

364. Where, by a mistake, the assent of a creditor under a deed of assignment has been signed by a clerk only, the Court, under the Bankruptcy Amendment Act, 1868, s. 3, will grant further time for registration, in order that the error may be rectified. *Re White*, 17 W. R. 18, Court of Bankruptcy.

365. A creditor may assent in writing to a composition deed, under s. 192 of the Bankruptcy Act, 1861, before the deed is prepared or executed by the debtor; and if the assent be to a deed of composition only, it will be sufficient, although the deed, when prepared, also contains a release. *Waddington* v. *Roberts*, L. R. 3 Q. B. 579.

366. A contributory of a company in course of winding up executed a deed of arrangement with his creditors, and entered the company as creditors only for a call of £5 per share which had been made. He was liable to be called on for £35 per share more, and calls to that amount were afterwards made. If the company had been entered as creditors for this whole amount, the dissenting creditors would have been the majority in value.

The debtor subsequently alleged a set-off against the calls, which he had not stated on the application for registration:—

Held, that the company ought to have been entered as creditors for the estimated amount of the future calls, as well as the call already made, being the amount proveable in bankruptcy according to the Companies Act, 1862, s. 75, that the deed, therefore, was not assented to by the majority required by the Bankruptcy Act, 1861, s. 192; and was not binding on a dissentient creditor. *Ex parte Pickering, In re Pickering*, L. R. 4 C. A. 58.

367. A creditor petitioned for adjudication against his debtor. On the following day the debtor gave notice of motion to stay proceedings and dismiss the petition. On the hearing of the motion, the debtor proved a deed registered under s. 200 of the Bankruptcy Act, 1861, before the petition was presented, and an order of a London Commissioner allowing it to be registered as complying with the provisions of the Act. The creditor proceeded to examine the debtor as to his creditors, in order to show that the provisions of s. 200 had not been complied with, but the examination was stopped on the ground that the order of the London Commissioner was conclusive; and an order was made dismissing the petition. The petitioning creditor appealed on the ground that the order was not warranted by s. 199 of the Act, and on the ground of the examination having been stopped:—

Held, that the Commissioner had jurisdiction to entertain the motion and to dismiss the petition, if satisfied that there was a deed of arrangement which would render an adjudication void:

But held, that the case must go back to the Commissioner for the examination of the debtor to proceed, the *ex parte* order of the London Commissioner not being conclusive evidence that the deed had been assented to as required by the Act. *Ex parte National Bank of England, In re Van Wart*, L. R. 4 C. A. 63; see *Ex parte Page, In re Neal*, 1 De G. J. & S. 283; *supra*, No. 158.

368. An officer in the army, who was under an engagement with a

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judgment creditor to pay the debt out of the moneys to arise from the sale or exchange of his commission, retired on half-pay, and, on being arrested by the judgment creditor, executed an arrangement deed, assented to by the requisite majority of his creditors, by which he bound himself to pay them a composition of ten shillings in the pound. At this time he had money in hand a little more than sufficient to pay the composition on his debts, which debts amounted to about £3000, and his half-pay was, at least, £150 a-year. No meeting of creditors was held, nor was it shown that the assenting creditors had investigated the debtor's affairs.

Held, that it was to be inferred that the assenting creditors had not exercised a discretion, with a view to their own pecuniary interests, as to whether the composition was fair, but had acted from some motive leading them to favour the debtor, and that the deed was invalid against a dissentient creditor. *Ex parte Deacon, In re Deacon*, L. R. 4 C. A. 87.

369. In an action of debt, the defendant pleaded a deed between himself, a trustee, and all his creditors, by which the defendant covenanted with the creditors respectively, if the deed were duly registered under the Bankruptcy Act, 1861, to pay to each of his creditors such sums as should in the aggregate be at the rate of two shillings in the pound upon the amount which would have been proveable against him if he had become bankrupt at the date of the registration, by two instalments of one shilling each. And it was agreed that the trustee should hold the defendant's property, already assigned to him, in trust for the defendant until default; provided that, if default was made in payment of the composition or any instalment thereof, the trustee should sell and apply the proceeds, inter alia, in payment rateably of the debts due to the creditors. The creditors for themselves respectively released the defendant from the debts due to the creditors respectively; and it was agreed and declared that in case default should be made, contrary to the covenant, in payment of the composition, or any instalment thereof, to the creditors respectively, then the release should be at an end, and the creditors should be at liberty to sue for the full amount of their respective debts less any amount already received. The plaintiff replied, on equitable grounds, that he was not an assenting creditor; that at the time the deed was executed the defendant was possessed of available assets sufficient to pay a much larger composition than two shillings in the pound; that the deed was not *bonâ fide* entered into or assented to by the majority of creditors for the equal benefit of all the defendant's creditors, but was entered into and assented to by such majority solely from motives of benevolence and kindness to the defendant, and for his sole and only benefit, and without just regard to the rights and interests of the other creditors of the defendant.

On demurrer—Held, a good replication, as showing the deed was not valid within s. 192, on the authority of *Ex parte Cowen*, L. R. 2 C. A. 563; *Hart and Another* v. *Smith*, L. R. 4 Q. B. 61.

370. The following document was signed by the requisite proportion of creditors of A.: "We hereby assent to and approve of a deed of composi-

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tion by A., whereby in consideration of the payment to the creditors of a composition of eight shillings in the pound by two instalments of two shillings and sixpence each at six and twelve months respectively, and one of three shillings at eighteen months, the last secured, the said creditors release the said A. from the payment of their debts." A deed was subsequently registered which provided reasonable security for the payment of the third instalment, but the creditors had not approved of such security before the registration of the deed.

Held, that though the assents were at first conditional on the third instalment being secured, that condition had been fulfilled before the registration of the deed, and that the assents were consequently sufficient under the first clause of the 192nd section of the Bankruptcy Act, 1861. *Horsfall* v. *The Swan Bank and Brick Works Company (Limited)*, 16 W. R. 934; s. c. 18 L. T. N. S. 409, on appeal from S. C. in Todmorden County Court below, nom. *Osborne* v. *the Swan Bank and Brick Works Company (Limited)*, 17 L. T. N. S. 96.

371. An assent to a deed intended to operate under the Bankruptcy Act, 1861, s. 192, by one creditor on behalf of himself and others, without prejudice to their rights under a former trust deed, is not a valid assent under the section in question, it being qualified. *Johnson* v. *Osenton*, 4 W. N. 32. See *Ex parte Rawlings*, 1 De G. J. & S. 225; *supra*, No. 63.

372. By deed purporting to be under s. 192 of the Bankruptcy Act, 1861, a debtor covenanted to pay two shillings in the pound to his creditors, but the affidavit of the debtor, the memorandum of registration, and the advertisement of entry in the *London Gazette*, gave the composition as three shillings. Of debts amounting to £518, a sum of £278 was represented by near relatives of the debtor who were assenting creditors.

Held, upon an application being made by a judgment creditor for leave to render process available, that no sufficient objection had been raised to the deed. *Ex parte Davis, Re Portbury*, 16 W. R. 915, Court of Bankruptcy.

373. Upon a plea of composition and release under s. 192 of the Bankruptcy Act, 1861,

Held, that the production of the deed and certificate of registration, and sealed copies of the affidavits required by s. 192 and by the General Rules of 1862, will not dispense with proof that a majority in number representing three-fourths in value of the creditors of £10 and upwards have in writing assented to or approved of the deed. *Bramble* v. *Moss*, L. R. 3 C. P. 458. See further *Morgan* v. *Savin*, 16 L. T. N. S. 457, No. 247; *Waddington* v. *Roberts*, L. R. 3 Q. B. 579, Nos. 365 and 389.

The following cases in division No. III. in the Digests, Original and Supplemental, have been since reported in the following places, viz.:—

No. 59. *Ex parte Smith, In re Smith*, 3 De G. J. & S. 218.
,, 61. *Ex parte Oldfield, In re Oldfield*, 3 De G. J. & S. 250.
,, 63. *Pinder* v. *Coqui*, 15 W. R. 22.
,, 64. *Ex parte Cockburn, In re Smith*, 3 De G. J. & S. 175.
,, 224. *Ex parte Cleland*, L. R. 2 C. A. 808.
,, 226. *Ex parte Middleton, In re Middleton*, 3 De G. J. & S. 201.

IV.

CASE UPON THE 2ND CONDITION OF THE 192ND SECTION.

SECTION 192. 2nd condition.

374. To render a deed under the Bankruptcy Act, 1861, s. 192 binding upon creditors it must be executed by the trustee personally, and the execution by the wife of the trustee by the authority of a letter from her husband is insufficient. No presumption from lapse of time can arise in favour of the due execution of the deed where it is clearly shown that the Act of Parliament has not been complied with. *Ex parte Jorey, Re Milstead*, 16 W. R. 582, Court of Bankruptcy. This case was compromised on appeal.

V.

CASE UPON THE 3RD CONDITION OF THE 192ND SECTION.

SECTION 192. 3rd condition.

The following case in division No. V. in the Original Digest has been since reported in the following place, viz.:—

No. 69. *In re Fulcher, Cooper, and Co.*, L. R. 1 C. A. 519.

VI.

CASES UPON THE 4TH AND 5TH CONDITIONS OF THE 192ND SECTION OF THE BANKRUPTCY ACT, 1861, AND UPON THE ORDER OF MAY 22ND, 1862, AND THE BANKRUPTCY AMENDMENT ACT, 1868, S. 3.

SECTION 192. 4th & 5th conditions and order of May, 1862, and Bankruptcy Amendment Act, 1868, s. 3.

375. The fourth condition of s. 192 of the Bankruptcy Act, 1861, which requires registration within twenty-eight days, is imperative, and not directory, and a deed which has not been registered within the twenty-eight days affords no defence to an action by a non-assenting creditor though it has been subsequently registered under s. 194. *Thomas* v. *Jones*, 16 W. R. 678.

376. Where by a mistake the Commissioner before whom two affidavits of debt have been sworn has omitted to initial the exhibits, the Court will (under the Bankruptcy Amendment Act, 1868, s. 3) grant further time for registration, in order that the omission may be rectified. *Re Thompson*, 17 W. R. 100, Court of Bankruptcy.

SECTION 192.

377. The majority of assenting creditors required by s. 192 of the Bankruptcy Act, 1861, for the purpose of making a deed under that section binding on dissenting creditors, must be constituted by creditors who have assented before registration of the deed under the fifth clause of that section. *Ex parte Raistrick, In re Nuttall*, 37 L. J. N. S. Bankruptcy, 12.

4th & 5th conditions and order of May, 1862, and Bankruptcy Amendment Act, 1868, s. 3.

378. A memorandum written on the face of the deed, according to s. 196 of the Bankruptcy Act, 1861, stating the day and the hour of the day on which the deed was brought to the office of the Chief Registrar for registration, and that it was duly registered pursuant to the provisions of the Bankruptcy Act, 1861, is *primâ facie* evidence that an affidavit, pursuant to clause 5 of s. 192, was delivered to the Chief Registrar together with the deed; and it is unnecessary to prove the truth of the affidavit. *Waddington* v. *Roberts*, L. R. 3 Q. B. 579. See above *Bramble* v. *Moss*, L. R. 3 C. P. 458, No. 373; and *Morgan* v. *Savin*, 16 L. T. N. S. 457, No. 247.

379. Where, by a mistake, the assent of a creditor under a deed of assignment has been signed by a clerk only, the Court (under the Bankruptcy Amendment Act, 1868) will grant further time for registration, in order that the error may be rectified. *Re White*, 17 W. R. 18, Court of Bankruptcy.

380. Where, after the execution by debtors in partnership, of a deed of composition under s. 192 of the Bankruptcy Act, 1861, one of the partners dies, the Court will allow registration upon the substitution for the affidavit of the deceased partner of an affidavit by some person able to depose thereto of the truth of the joint and separate accounts of the deceased partner. *Anonymous*, 16 W. R. 308, Court of Bankruptcy.

381. Where a debtor dies after his execution of a deed of assignment under the 192nd section and before registration, the Court will dispense with the affidavit of debts required by the rule of May, 1862, and will accept in lieu thereof an affidavit by the widow. *Anonymous*, 16 W. R. 651, Court of Bankruptcy.

382. A. executed a deed of arrangement with his creditors, which was on the face of it duly assented to by the necessary majority of the creditors. He, however, omitted from the schedule of debts a judgment at law on a bill of exchange, which had been obtained against him by C. some time previously. C. afterwards took proceedings in outlawry against A., and ultimately he was imprisoned, but was released by a Court of Law on the ground that the certificate of the registration of the deed was a protection to him, even though the deed was in itself invalid. C., having made no previous application to the Court of Bankruptcy, then (fifteen months after the execution of the deed) applied to the Commissioner for leave to issue execution against A. on the judgment. A. swore that the judgment was obtained on a bill of exchange for which no consideration had been given by him. The Commissioner gave leave to issue execution, and, on appeal, this decision was affirmed. *Ex parte Ames, Re Ames*, 16 W. R. 1132.

383. The omission of a debt from the schedule is not a ground on which the Court of Chancery can hold a deed to be invalid, if the requirements of the 192nd section of the Bankruptcy Act, 1861, are satisfied.

SECTION 192.

4th & 5th conditions and order of May, 1862, and Bankruptcy Amendment Act, 1868, s. 3.

The question of compliance with the General Order of the 22nd May, 1862, is not one to be considered by a Court of Equity. *In re Richmond Hill Hotel Company, Ex parte King*, L. R. 4 Eq. 566. Affirmed on appeal, L. R. 3 C. A. 10. See *Walker* v. *Nevill*, 3 H. & C. 403, *supra*, No. 80.

384. A contributory of a company in course of winding up executed a deed of arrangement with his creditors, and entered the company as creditors only for a call of £5 per share which had been made. He was liable to be called on for £35 per share more, and calls to that amount were afterwards made. If the company had been entered as creditors for this whole amount, the dissenting creditors would have been the majority in value.

The debtor subsequently alleged a set-off against the calls, which he had not stated on the application for registration:—

Held, that the company ought to have been entered as creditors for the estimated amount of the future calls, as well as the call already made, being the amount proveable in bankruptcy according to the Companies Act, 1862, s. 75, that the deed, therefore, was not assented to by the majority required by the Bankruptcy Act, 1861, s. 192; and was not binding on a dissentient creditor. *Ex parte Pickering, In re Pickering*, L. R. 4 C. A. 58.

385. A deed under s. 192 of the Bankruptcy Act, 1861, was expressed to be made between the debtor and certain persons named in the schedule as creditors, and all other the creditors of the defendant, and was executed by a majority in number, representing three-fourths in value of the debtor's creditors, and was then registered; after registration, the names of two additional creditors of the debtor, were inserted in the schedule:—

Held, that there was no material alteration of the deed, and, that as the requisite number had assented before registration, the insertion of the names of the two creditors after registration did not affect the validity of the deed. *Wood* v. *Slack*, L. R. 3 Q. B. 379; see *In re Richmond Hotel Company, Ex parte King*, L. R. 4 Eq. 566: L. R. 3 C. A. 10; *supra*, No. 356; *Sellin* v. *Price*, L. R. 2 Exch. 189; *supra*, Nos. 241, 336.

The following cases in division No. VI. in the Digests, Original and Supplemental, have been since reported in the following places, viz.:—

No. 73. *Re Skinner*, 3 De G. J. & S. 238.
,, 74. *Ex parte Middleton, In re Middleton*, 3 De G. J. & S. 201.
,, 86. *Ex parte Savin, In re Savin*, L. R. 1 C. A. 616.
,, 241. *Ex parte Cockburn, Re Smith*, 3 De G. J. & S. 175.

VIII.

CASES ON THE 194TH SECTION.

SECTION 194.

386. A deed of assignment under the Bankruptcy Act, 1861, schedule D, may be given in evidence as proof of an act of bankruptcy, though neither

stamped nor registered; and notice of the execution of the deed is notice of an act of bankruptcy. SECTION 194.

H. being in difficulties, executed a deed in the form given in schedule D of the Bankruptcy Act, 1861. The deed was never stamped or registered. Immediately after its execution an attorney, acting both for H. and the trustees named in the deed, wrote to W., an auctioneer, informing him of the execution of the deed, and authorising him to sell the goods of H. W. sold the goods, and, after the expiration of twenty-eight days, paid the proceeds to H. H. subsequently absconded, and was made a bankrupt. In an action by the assignee of H. under the bankruptcy against W. to recover the value of the goods, the deed was put in evidence and its execution relied on as the act of bankruptcy:—

Held, that the deed being given in evidence for a collateral purpose, and not to give effect to it, was admissible, although not stamped or registered; that the act of bankruptcy was complete on the execution of the deed; and that therefore W. had notice of an act of bankruptcy. *Ex parte Wensley*, 1 De G. J. & S. 273, acted on. *Ex parte Potter*, 3 De G. J. & S. 240 (*supra*, No. 91), questioned. *Ponsford* v. *Walton*, L. R. 3 C. P. 167. See *Hobson* v. *Thelluson*, L. R. 2 Q. B. 642: *infra*, No. 452.

387. An assignment of the whole of a debtor's property for the benefit of creditors, may be given in evidence as an act of bankruptcy though unstamped and not registered under the Bankruptcy Act, 1861. *Ponsford* v. *Walton*, L. R. 3 C. P. 167, followed; *Ex parte Squire, In re Gouldwell*, L. R. 4 C. A. 47. See further *Thomas* v. *Jones*, 16 W. R. 678, *supra*, No. 375.

The following case in division VIII. in the Original Digest has been since reported in the following place, viz.:—

No. 91. *Ex parte Potter, Re Barron*, 3 De G. J. & S. 240.

VIII. (A).

CASE ON THE 195TH SECTION.

388. An inspectorship deed of a debtor's estate under s. 192 of the Bankruptcy Act, 1861, is sufficiently stamped under s. 195 of the same statute, if in addition to the ordinary deed stamp it bear an *ad valorem* stamp, calculated at the rate of 5*s.* upon every hundred pounds of the whole amount of the debts uncovered by security; and the amount of the secured debts need not be taken into consideration in calculating such stamp duty. *Graves* v. *Lovett*, 18 L. T. N. S. 297. SECTION 195.

VIII. (*a*)

CASE ON THE 196TH SECTION.

SECTION 196.

389. A memorandum written on the face of the deed, according to s. 196 of the Bankruptcy Act, 1861, stating the day and the hour of the day on which the deed was brought to the office of the chief registrar for registration, and that it was duly registered pursuant to the provisions of the Bankruptcy Act, 1861, is *primâ facie* evidence that an affidavit, pursuant to clause 5 of s. 192, was delivered to the chief registrar, together with the deed; and it is unnecessary to prove the truth of the affidavit. *Waddington* v. *Roberts*, L. R. 3 Q. B. 579. See above, *Bramble* v. *Moss*, L. R. 3 C. P. 468, *supra*, No. 373; and *Morgan* v. *Savin*, 16 L. T. N. S. 457, *supra*, No. 247.

IX.

CASES ON THE 197TH SECTION.

SECTION 197.

390. A creditor making an application for the examination in the Court of Bankruptcy of an arranging debtor is bound to show by affidavit some ground for the examination, and must not in his affidavit suppress any material facts. *Ex parte Pooley, Re Gabrielli*, 16 W. R. 957.

391. A creditor who assents to a composition deed under the Bankruptcy Act, 1861, s. 192, and who is summoned under the 197th section of the Act by a dissenting creditor to be examined as to his dealings with the debtor, with a view to the impeachment of the deed, is entitled to payment of his expenses before being sworn, like an ordinary witness. *Re a Deed of Composition*, 19 L. T. N. S. 23, Court of Bankruptcy.

392. The trustees of a creditors' deed having sold all the property comprised in the deed, the Court of Bankruptcy has no jurisdiction under the Bankruptcy Act, 1861, to summon for examination persons alleged to owe money to the estate of the debtor who executed the deed. *Re Rylands*, 17 W. R. 40: 19 L. T. N. S. 371.

393. A creditor petitioned for adjudication against his debtor. On the following day the debtor gave notice of motion to stay proceedings and dismiss the petition. On the hearing of the motion, the debtor proved a deed registered under s. 200 of the Bankruptcy Act, 1861, before the petition was presented, and an order of a London Commissioner allowing it to be registered as complying with the provisions of the Act. The creditor proceeded to examine the debtor as to his creditors, in order to show that the

provisions of s. 200 had not been complied with, but the examination was stopped on the ground that the order of the London Commissioner was conclusive; and an order was made dismissing the petition. The petitioning creditor appealed, on the ground that the order was not warranted by s. 199 of the Act, and on the ground of the examination having been stopped:—

Held, that the Commissioner had jurisdiction to entertain the motion and to dismiss the petition, if satisfied that there was a deed of arrangement which would render an adjudication void:

But held, that the case must go back to the Commissioner for the examination of the debtor to proceed, the ex parte order of the London Commissioner not being conclusive evidence that the deed had been assented to as required by the Act. *Ex parte National Bank of England, In re Van Wart*, L. R. 4 C. A. 63.

394. A person who has a claim against a debtor for unliquidated damages is not a creditor within the meaning of ss. 192 and 197 of the Bankruptcy Act, 1861.

Where a trust deed under the 192nd section of the Bankruptcy Act, 1861, does not in terms extend to creditors in respect of unliquidated damages, they cannot come in under the deed by virtue of the 153rd section. *Secus* as to a deed in the form of schedule D, under the 200th section. *Ex parte Wilmot, In re Thompson*, L. R. 2 C. A. 795, *supra*, No. 262. See *In re Richmond Hill Hotel Company, Ex parte King*, L. R. 3 C. A. 10: *supra*, No. 356.

395. The Court has no jurisdiction to order inspectors to deliver up a bill of exchange claimed by a creditor or to restrain the negotiation of it. *Ex parte The Chartered Bank of India, Australia, and China, Re Smith*, 16 W. R. 159, Court of Bankruptcy.

396. Where a deed under s. 192 of the Bankruptcy Act, 1861, conveys all the estate and effects of the debtor to trustees, to be held and administered by them for the benefit of the creditors, as if the debtor had been adjudicated bankrupt, the title of the trustees has, by virtue of s. 197, relation back; and they can bring trover for goods fraudulently transferred by the debtor before the execution of the deed, without doing any act to avoid the transaction. *Exley* v. *Inglis*, L. R. 3 Ex. 247.

397. Where a debtor has executed a deed in the form of schedule D to the Bankruptcy Act, 1861, the Court of Bankruptcy has jurisdiction under s. 197 to order the trustee to pay a dividend to a creditor. *Ex parte Delaunay, In re Pilling*, L. R. 3 C. A. 258.

398. By a deed (duly registered) in the form given in schedule D to the Bankruptcy Act, 1861, to which the required majority of the creditors assented, B. assigned all his effects to a trustee, "to be applied and administered for the benefit of the creditors in like manner as if B. had been at the date thereof duly adjudged a bankrupt."

Held, that the title of the trustee under s. 197 of that Act dated from the execution of the deed, and that a distress for rent levied between that time and the day of registration could not by reason of s. 129 of the Bankrupt

SECTION 197. Act, 1849, be made available for more than one year's rent. *Williams* v. *Cadbury*, Law Rep. 2 C. P. 453, *supra*, No. 256, distinguished; *Selby* v. *Greaves*, L. R. 3 C. P. 594. See the cases referred to above, No. 362.

399. A deed of inspection by which nothing is conveyed, but containing a covenant by the debtor to convey, if required, and he has not been required so to do, is not such a deed as will give the parties the same rights as they would have had under a bankruptcy.

The question of reputed ownership cannot arise under such a deed. *Ex parte Holland, Jaques, & Co., Re Thompson, Holland, & Co.*, 19 L. T. N. S. 430, Court of Bankruptcy. See *Ex parte the Inspectors, Re Carlisle Canal Company*, 13 L. T. N. S. 70: *supra*, No. 109. S. C. *nom.*, *Ex parte the Inspectors, Re Carlisle Carr & Co.*, 14 W. R. 16. See, however, per Lush, J., in *Hartley* v. *Mare*, 19 C. B. N. S. 85, 90; and per Turner, L. J., in *Re Marks' Trust Deed*, L. R. 1 C. A. 429, 432; *supra*, Nos. 152, 98.

400. X. bought hops of T. on a custom known in the hop trade as W. O. *i.e.*, the hops were to wait the order of X. in T.'s warehouse, and to be charged for warehouse room and insurance. X. paid for the hops by bills of exchange, which were dishonoured at maturity. X. afterwards registered a deed of composition which was assented to and executed by T. to the ful amount of his debt in respect of the dishonoured bills.

Held, that T.'s assent and execution of the deed operated as a proof in bankruptcy, and therefore an abandonment of his lien for unpaid purchase-money. *Ex parte Turnbull, Re Oxley*, 19 L. T. N. S. 463: 17 W. R. 200, Court of Bankruptcy. See *Ex parte Spicer*, 12 L. T. N. S. 55: *supra*, No. 112; *Ex parte Middleton, In re Middleton*, 3 De G. J. & S. 301: *supra*, Nos. 74, 226, 307. And also *Whittaker* v. *Lowe*, 4 H. & C. 109: L. R. 1 Exch. 74: *supra*, 59, 222.

See further, *Infra*, Nos. 429, *sqq.*

The following cases in division No. IX. in the Digests, Original and Supplemental, have been since reported in the following places, viz.:—

No. 105, 249. *Ex parte Brooks, Re Brooks*, 3 De G. J. & S. 212.
,, 111. *Ex parte Gibbins, Re Gibbins*, 3 De G. J. & S. 258.
,, 125. *Smith* v. *Dresser*, 35 Beav. 378.
,, 257. *Ex parte The Governors and Company of the Bank of England, Re Sir Charles Price*, L. R. 2 C. A. 662.
,, 261. *Ex parte Wilmot, Re Thompson*, L. R. 2 C. A. 795.
,, 262. *In re Richmond Hill Hotel Company (Limited), King's case*, L. R. 3 C. A. 10.

X.

CASES ON THE 198TH SECTION.

SECTION 198.

401. A certificate of the registration of a deed under the Bankruptcy Act, 1861, does not, by virtue of s. 198, protect the debtor from arrest for debts not bound by the deed, nor the sheriff in releasing him, at least without due inquiry.

To an action for an escape, the defendant pleaded that the debtor produced a certificate of the registration of a deed within s. 198 of the Bankruptcy Act, 1861. Replication, that the judgment was subsequent to the registration, of which fact the defendant had notice, and which was stated on the writ of *ca. sa.*; that it was obtained on a debt which became due subsequently to the registration; and that the plaintiffs were not creditors under the deed in respect of the debt, as the defendant might with due care have known.

Held, on demurrer, a good replication. *Williams and Another* v. *Rose*, L. R. 3 Ex. 5; *supra*, No. 269.

See next case, and *Rossi* v. *Bailey*, L. R. 3 Q. B. 621; *infra*, No. 414.

402. A debtor executed and registered a deed under s. 192 of the Bankruptcy Act, 1861, and was subsequently arrested upon a *ca. sa.* on a judgment recovered in respect of a cause of action which first accrued after the execution and registration of the deed. The debtor produced to the officer who arrested him the certificate of the registration of the deed, and was thereupon discharged from custody. In an action by the creditor against the sheriff for an escape,

Held, on demurrer, that the production of the certificate did not justify the sheriff under s. 198 in releasing the debtor. *Dignam* v. *Baily*, L. R. 3 Q. B. 178. See last case, and case there referred to.

403. A debtor was convicted under the 6th section of the Copyright Act (25 & 26 Vict. c. 68), for violations of copyright in engravings, and sentenced to pay a fine, and in default was imprisoned. After the conviction he executed a deed of composition with his creditors, which was duly registered. He then applied for discharge from prison.

Held, that the process under which the debtor was arrested was of a criminal nature, and not for a debt, and that he was not entitled to his discharge. *Ex parte Graves, In re Prince*, L. R. 3 C. A. 642.

404. Where a debtor in the custody of the sheriff executes a deed of composition under the 192nd section of the Bankruptcy Act, 1861, and applies for his release, the onus is upon him to show that the deed is a valid one, and the Court will order him to be examined for that purpose.

If the deed be valid, the Court has power to order the release. *Ex parte Davis, In re Davis*, 16 W. R. 17, Court of Bankruptcy.

SECTION 198.

405. A. being in custody under a *ca. sa.* executed a composition deed, and obtained a certificate of protection and discharge under the provisions of the Bankruptcy Act, 1861, s. 198. The deed, though good upon the face of it, was invalid, and notice of its invalidity was given to the sheriff.

Held, that the sheriff was bound, notwithstanding such notice, to release A. out of custody on the production of the certificate. *Ames* v. *Colnaghi*, L. R. 3 C. P. 359.

406. In July, 1867, a major in the army on full pay assigned to one of his creditors all monies which should come into the hands of Messrs. Cox, the army agents, upon trust after payment of costs to pay the debts of two detaining creditors in full. He covenanted not to sell or exchange his commission except through the agency of Messrs. Cox, and that he would not do anything whereby he might be deprived of his commission or be hindered from selling it. He therefore obtained his release.

Afterwards the debtor retired on half pay, and on the 2nd of November, 1868, he executed a deed of arrangement by which he proposed to pay to a trustee for the benefit of his creditors the sum of 10*s.* in the pound upon his debts in consideration of his release. The selling value of his commission was £3,200, but his position after his retirement on half pay appeared to have been that, in addition to his half pay, he had in his possession a sum of £1,650, which would be more than sufficient to pay the composition on the debts due from him. The debtor having been again arrested at the suit of one of the creditors who had in the first instance detained him:—

Held, that the deed of composition was not binding on the detaining creditor, and that the application must be refused. *Re Deacon*, 17 W. R. 137, 19 L. T. N. S. 367, Court of Bankruptcy.

407. A. executed a deed of arrangement with his creditors, which was on the face of it duly assented to by the necessary majority of the creditors. He, however, omitted from the schedule of debts a judgment at law on a bill of exchange, which had been obtained against him by C. some time previously. C. afterwards took proceedings in outlawry against A., and ultimately he was imprisoned, but was released by a Court of Law on the ground that the certificate of the registration of the deed was a protection to him, even though the deed was in itself invalid. C., having made no previous application to the Court of Bankruptcy, then (fifteen months after the execution of the deed) applied to the Commissioner for leave to issue execution against A. on the judgment. A. swore that the judgment was obtained on a bill of exchange for which no consideration had been given by him.

The Commissioner gave leave to issue execution, and, on appeal, this decision was affirmed. *Ex parte Ames*, *Re Ames*, 16 W. R. 1132.

408. Notice of an application under the 198th section of the Bankruptcy Act, 1861, for leave to render process available must be personally served upon the debtor. *Re Wadeson*, 17 W. R. 17, Court of Bankruptcy.

409. On the 9th of August a verdict was obtained against a debtor who, on the 22nd, executed a deed of composition with his creditors. On the following day the debtor was adjudicated a bankrupt upon a petition presented by a

creditor, and the plaintiff taxed his costs on the 26th without notice either of the deed or of the bankruptcy. The plaintiff having caused a writ of *fi. fa.* to be issued, the sheriff, on the 4th of September, seized two houses which had been in the possession of the defendant. On the 13th the deed was registered, and on the 18th the bankruptcy was annulled with the consent of the petitioning creditor. SECTION 198.

Upon an application being made by the plaintiff for leave to render process available notwithstanding the deed,

Held, that although the deed was a simple composition deed, yet that the plaintiff was not at liberty to avail himself of his judgment, for he would thereby obtain a larger share of the debtor's estate than the other creditors, which would be contrary to the letter and spirit of the statute. *Ex parte Spurr, Re Courtenay*, 16 W. R. 63, Court of Bankruptcy.

410. A deed of composition is not invalid or fraudulent where no assets are realised, provided there be a reasonable probability that claims by the debtor will result in assets.

A claim for set-off in respect of a dispute between the debtor and the company as to the number of shares held by the former is barred by the settled list of contributories.

An application for leave to issue execution fifteen months after registration of the deed is not too late when the debtor by his own act has caused the delay. A deed executed and registered between verdict and judgment ought to be pleaded in arrest of judgment.

Where the debtor and his solicitor attended in obedience to a summons, and made an objection thereto on a matter of form, the objection was held to have been waived. *Ex parte Anonymous, Re a Deed of Composition*, 19 L. T. N. S. 73, Court of Bankruptcy; s. c. on appeal, nom. *Ex parte Pickering, In re Pickering*, L. R. 4 C. A. 58. As to the first point, see *Ex parte Morrison, In re Clunn*, 3 De G. J. & S. 232: *supra*, Nos. 131, 193. As to the third point, see *Ex parte Ames, Re Ames*, 16 W. R. 1132: *supra*, No. 407. And as to the fourth point, *Rossi* v. *Bailey*, L. R. 3 Q. B. 621: *infra*, No. 414, and case there referred to.

411. Upon an application being made by a dissenting creditor for leave to render process available notwithstanding the registration by the debtor of a deed of composition, the Court will receive the evidence of witnesses as to the existence of alleged debts, and however unsatisfactory it may be that a dissenting creditor should be bound by a deed made binding upon him by including a debt contracted by one brother with another at different periods during five or six years, and of which no reliable record exists; yet, if the story told by the brothers is consistent, and if their evidence is straightforward, and they appear to be witnesses of truth, it cannot be resisted. If, however, their evidence is on some points in which they cannot well be mistaken, evidently and deliberately untrue, the rights of creditors ought not to be affected by a deed supported by no other testimony, and the Court accordingly, irrespective of any other objection to the deed, will grant leave to render process available. *Ex parte Rose, Re Dunbar*, 16 W. R. 275,

SECTION 198. Court of Bankruptcy. See further as to this kind of case, *Ex parte Cowen, In re Cowen*, L. R. 2 C. A. 563; *Ex parte Deacon, In re Deacon*, L. R. 4 C. A. 87; *Hart and Another* v. *Smith*, L. R. 4 Q. B. 61: *supra*, Nos. 217, 301, 368, 369.

412. By deed purporting to be under the 192nd section of the Bankruptcy Act, 1861, a debtor covenanted to pay two shillings in the pound to his creditors, but the affidavit of the debtor, the memorandum of registration, and the advertisement of entry in the *London Gazette*, gave the composition as three shillings. Of debts amounting to £518, a sum of £278 was represented by near relatives of the debtor, who were assenting creditors.

Held, upon an application being made by a judgment creditor for leave to render process available, that no sufficient objection had been raised to the deed. *Ex parte Davis, Re Portbury*, 16 W. R. 915, Court of Bankruptcy.

413. On the 2nd October A. caused a trader-debtor summons to be issued against B., and upon the return thereof on the 7th B. filed an admission. On the same day B. executed a deed of composition under the 192nd section of the Bankruptcy Act, 1861, which was registered on the 10th. Notice of the registration was given on the 12th, and on the 22nd B. was adjudicated on A.'s petition, without any leave being given for that purpose pursuant to the 198th section.

Upon the adjudication being disputed by B.,

Held, that it was invalid. *Anonymous*, 17 W. R. 13.

414. A debtor, who had executed and registered a deed of composition, under s. 192 of the Bankruptcy Act, 1861, containing a release, was sued by a non-assenting creditor for a debt due before the execution of the deed. The debtor neglected to plead the deed, and the creditor obtained judgment, and issued execution:—

Held, that, as the debtor might have pleaded the deed, he was estopped from setting it up afterwards to defeat the execution under s. 198. *Rossi* v. *Bailey*, L. R. 3 Q. B. 621. See *Williams* v. *Rose*, L. R. 3 Ex. 5: *Dignam* v. *Baily*, L. R. 3 Q. B. 178: *supra*, Nos. 401 and 402.

415. Judgment having been obtained in an action, and a writ of execution by *fi. fa.* having been issued, but not having been put into execution, the defendant applied to set aside the writ and stay any further proceedings by way of execution, on the ground that the defendant had entered into a deed of composition with his creditors under the Bankruptcy Act, 1861, which he had had no reasonable opportunity of pleading in the action:—

Held, that the Court ought not to interfere, no attempt having been made to render process available, which is all that is forbidden by s. 198 of the Bankruptcy Act, 1861. *Harding* v. *Inskip*, 19 L. T. N. S. 609: L. R. 4 Ex. 80. See *Ex parte M., Re a Deed of Assignment*, 17 W. R. 17; *Ellis* v. *McCormick*, 4 W. N. 44: *infra*, Nos. 465, 492.

The following cases in Division X. of the Digests, Original and Supplemental, have been since reported in the following places, viz.:—

No. 128. *Ex parte Smith, Re Smith*, 3 De G. J. & S. 218.

No. 131. *Ex parte Thatcher*, L. R. 2 C. A. 93. SECTION
„ 141. *Ex parte Savin, In Re Savin*, L. R. 1 C. A. 616. 198.
„ 269. *Williams* v. *Rose*, L. R. 3 Ex. 5.
„ 302. *In re Greatorex*, 16 W. R. 143.
„ 303. *Ex parte Glen, Re Glen*, L. R. 2 C. A. 670.
„ 304. *Ex parte Cleland, Re Davies*, L. R. 2 C. A. 808.
„ 307. *Ex parte Middleton, Re Middleton*, 3 De G. J. & S. 201.

XI.

CASES ON THE 199TH SECTION.

416. An application under the 199th section of the Bankruptcy Act, 1861, to dismiss a petition for adjudication of bankruptcy filed by an executing debtor prior to a registration of the deed, which took place without his concurrence, is too late after the bankrupt has passed his examination and obtained a discharge. SECTION 199.

Semble, the deed was revocable prior to registration and under the circumstances, therefore, not binding on the executing debtor.

Semble, the petition referred to in the 199th section is a creditor's petition only, and an application under that section is supposed to be made on behalf of and not adversely to an executing debtor. *Re William Bell*, 18 L. T. N. S. 62, Newcastle Court of Bankruptcy.

417. A debtor executed a deed of composition with his creditors on the 28th January, 1868. The deed having been duly assented to, was registered on the 17th February. On the 7th February the debtor was adjudicated bankrupt on the petition of a creditor filed on the 5th February, the act of bankruptcy relied on having been committed on the 22nd January.

On the application of the debtor on the 27th February, the Commissioner, under section 199 of the Bankruptcy Act, 1861, dismissed the petition and annulled the bankruptcy, but directed the costs of the proceedings in bankruptcy to be paid by the bankrupt.

Held, upon appeal, that the bankrupt ought not to pay the costs of the proceedings. *Ex parte Jacobs, Re Jacobs*, 16 W. R. 684.

418. Where after the issuing of a judgment debtor summons and before adjudication the debtor executes and duly registers a deed of inspectorship with his creditors, the Court will not adjudicate the debtor a bankrupt under the Bankruptcy Act, 1861, s. 83, at the instance of the judgment creditor. *Anonymous*, 16 W. R. 966, Court of Bankruptcy.

419. Where a petition for adjudication of bankruptcy has been opened pending the time allowed for registration of a trust deed, and dismissed upon the subsequent registration of the deed, the Court has no jurisdiction

SECTION 199. to order payment of the petitioning creditor's costs. *Re Embleton*, 18 L. T. N. S. 924, Newcastle Court of Bankruptcy.

The following case in Division XI. of the Original Digest has since been reported in the following place, viz. :—

No. 161. *Ex parte Jones, Re McTurk*, 3 De G. J. & S. 230.

XII.

CASES UPON THE 200TH SECTION.

SECTION 200. 420. A person who has a claim against a debtor for unliquidated damages is not a creditor within the meaning of sections 192 and 197 of the Bankruptcy Act, 1861.

Where a trust deed under the 192nd section does not in terms extend to creditors in respect of unliquidated damages, they cannot come in under the deed by virtue of the 153rd section. Secus as to a deed in the form of schedule D, under the 200th section. *Ex parte Wilmot, In re Thompson*, L. R. 2 C. A. 795. See *In re Richmond Hill Hotel Company, Ex parte King*, L. R. 3 C. A. 10: *supra*, No. 356.

421. A creditor petitioned for adjudication against his debtor. On the following day the debtor gave notice of motion to stay proceedings and dismiss the petition. On the hearing of the motion the debtor proved a deed registered under s. 200 of the Bankruptcy Act, 1861, before the petition was presented, and an order of a London Commissioner allowing it to be registered as complying with the provisions of the Act. The creditor proceeded to examine the debtor as to his creditors, in order to show that the provisions of s. 200 had not been complied with, but the examination was stopped on the ground that the order of the London Commissioner was conclusive; and an order was made dismissing the petition. The petitioning creditor appealed on the ground that the order was not warranted by s. 199 of the Act, and on the ground of the examination having been stopped :—

Held, that the Commissioner had jurisdiction to entertain the motion and to dismiss the petition, if satisfied that there was a deed of arrangement which would render an adjudication void:

But held, that the case must go back to the Commissioner for the examination of the debtor to proceed, the ex parte order of the London Commissioner not being conclusive evidence that the deed had been assented to as required by the Act. *Ex parte National Bank of England, In re Van Wart*, L. R. 4 C. A. 63.

422. Where a debtor has executed a deed in the form of schedule D to the Bankruptcy Act, 1861, the Court of Bankruptcy has jurisdiction under

section 197 to order the trustee to pay a dividend to a creditor. *Ex parte Delaunay, In re Pilling*, L. R. 3 C. A. 258. SECTION 200.

423. A deed of assignment under the Bankruptcy Act, 1861, schedule D, may be given in evidence as proof of an act of bankruptcy, though neither stamped nor registered; and notice of the execution of the deed is notice of an act of bankruptcy.

H. being in difficulties, executed a deed in the form given in schedule D of the Bankruptcy Act, 1861. The deed was never stamped or registered. Immediately after its execution an attorney, acting both for H. and the trustees named in the deed, wrote to W., an auctioneer, informing him of the execution of the deed, and authorising him to sell the goods of H. W. sold the goods, and, after the expiration of twenty-eight days, paid the proceeds to H. H. subsequently absconded, and was made a bankrupt. In an action by the assignee of H. under the bankruptcy against W. to recover the value of the goods, the deed was put in evidence, and its execution relied on as the act of bankruptcy:—

Held, that the deed being given in evidence for a collateral purpose, and not to give effect to it, was admissible, although not stamped or registered; that the act of bankruptcy was complete on the execution of the deed; and that therefore W. had notice of an act of bankruptcy. *Ex parte Wensley*, 1 De G. J. & S. 273, acted on; *Ex parte Potter*, 3 De G. J. & S. 240, questioned; *Ponsford* v. *Walton*, L. R. 3 C. P. 167.

424. An assignment of the whole of a debtor's property for the benefit of creditors may be given in evidence as an act of bankruptcy, though unstamped, and not registered under the Bankruptcy Act, 1861. *Ponsford* v. *Walton*, L. R. 3 C. P. 167, followed; *Ex parte Squire, In re Gouldwell*, L. R. 4 C. A. 47.

425. Where a deed under s. 192 of the Bankruptcy Act, 1861, conveys all the estate and effects of the debtor to trustees, to be held and administered by them for the benefit of the creditors, as if the debtor had been adjudicated bankrupt, the title of the trustees has, by virtue of s. 197, relation back; and they can bring trover for goods fraudulently transferred by the debtor before the execution of the deed, without doing any act to avoid the transaction. *Exley* v. *Inglis*, L. R. 3 Ex. 247. In this case, however, the deed was not, in other respects than that above mentioned, precisely in the form given in Schedule D.

426. By a deed (duly registered) in the form given in schedule D to the Bankruptcy Act, 1861, to which the required majority of the creditors assented, B. assigned all his effects to a trustee "to be applied and administered for the benefit of the creditors, in like manner as if B. had been at the date thereof duly adjudged a bankrupt:"—

Held, that the title of the trustee under section 197 of that Act, dated from the execution of the deed, and that a distress for rent levied between the time and the day of registration could not, by reason of section 129 of the Bankrupt Act, 1849, be made available for more than one year's rent. *Williams* v. *Cadbury*, Law. Rep. 2 C. P. 453; *supra*, No. 256, dis-

SECTION 200. tinguished, *Selby* v. *Greaves*, L. R. 3 C. P. 594. See cases cited above, No. 362.

427. A deed made in the form of schedule D to the Bankruptcy Act, 1861, and registered under section 192, cannot be pleaded as an equitable plea to an action of debt by a non-assenting creditor. *Wright* v. *Jelley*, L. R. 4 Exch. 9. See *Ex parte James*, 15 L. T. N. S. 193: *supra*, No. 178.

428. A creditors' deed in the form given in Schedule D to the Bankruptcy Act, 1861, has the same effect as to vesting property in the assignees as a bankruptcy, and the assignor is therefore an unnecessary party to a suit instituted by the assignee for the specific performance of an agreement subsisting between the assignor and the defendants prior to the execution of the creditor's deed. *Fenton* v. *The Queen's Ferry Wire Rope Company (Limited)*, 17 W. R. 155.

The following cases referred to in the Digests, Original and Supplemental, were also cases of deeds of the form given in Schedule D or nearly so;—*Symons* v. *George*, 3 H. & C. 68, 996; *The Ipstones Park Iron Ore Company, Limited* v. *Pattinson*, 2 H. & C. 828; *Smith* v. *Dresser*, 35 Beav. 378; *Ex parte Thatcher*, L. R. 2 C. A. 93; *Eyre* v. *Archer*, 16 C. B. N. S. 638; and *Ex parte James*, 15 L. T. N. S. 193; *Clarke* v. *Williams*, 3 H. & C. 508, 1001; *Jones* v. *Morris*, 6 B. & S. 198; *European Central Railway Company* v. *Westall*, 6 B. & S. 970: L. R. 1 Q. B. 167; *Bovill* v. *Goodier*, 3 W. N. 35; *Ex parte Mendel, In re Moor's Assignment*, 1 De G. J. & Sm. 330; *Ex parte Smith, In re Smith's Trust Deed*, 3 De G. J. & S. 218; *Ex parte Dobson, In re Anderson's Trust Deed*, ib. 229; *Ex parte Jones, In re McTurk*, ib. 230; *Ex parte Morrison, In re Clunn*, ib. 232; *Ex parte Groome, In re Groome's Trust Deed*, ib. 249; *Ex parte Gibbins, In re Gibbins' Trust Deed*, ib. 258; *Re Penton*, L. R. 1 C. A. 158 (see L. R. 2 C. A. 802; *Knight* v. *Burgess*, 33 L. J. N. S. Ch. 727; *supra*, Nos. 175, 181 and 125 and 131 and 179, 178, 177, 179, 182, 121, 122, 126, 163 and 342, 59 and 128, 163, 161, 131 and 193, 335, 111, 121, 167.

The following case in Division XII. of the Original Digest has since been reported in the following place:—

No. 163. *Ex parte Dobson, Re Anderson*, 3 De G. J. & S. 229.

XIII.

CASES ON THE GENERAL EFFECT OF DEEDS OF ARRANGEMENT.

GENERAL EFFECT OF DEEDS. 429. A debtor who had executed and registered a deed of composition under s. 192 of the Bankruptcy Act, 1861, containing a release, was sued by

a non-assenting creditor for a debt due before the execution of the deed. The debtor neglected to plead the deed, and the creditor obtained judgment and issued execution. GENERAL EFFECT OF DEEDS.

Held, that as the debtor might have pleaded the deed he was estopped from setting it up afterwards to defeat the execution under s. 198. *Rossi* v. *Bailey*, L. R. 3 Q. B. 621, deciding the point left undecided in the case of the *Staffordshire Banking Company* v. *Emmott*, L. R. 2 Exch. 208: *supra*, No. 306, in favour of the opinion therein of Bramwell and Channell, BB.

430. A person who carried on business in partnership executed a composition deed for the benefit of his separate creditors only, which was assented to by the requisite statutory majority of separate creditors. The firm was also indebted.

Held, that the deed was not binding on a dissenting separate creditor, for that a deed providing for one class of creditors only is not within s. 192 of the Bankruptcy Act, 1861. *Ex parte Glen, In re Glen*, L. R. 2 C. A. 670: *supra*, No. 303.

431. A deed of composition made between the members of a partnership and the joint creditors of the firm without any reference to the separate creditors of the different members of the firm, is not within s. 192 of the Bankruptcy Act, 1861; and is invalid against non-assenting joint creditors. *Tomlin* v. *Dutton*, L. R. 3 Q. B. 466. See *Re Lowden's Settlement*, 10 L. T. N. S. 261; *European Central Railway Co.* v. *Westall*, L. R. 1 Q. B. 167; *Ex parte Glen*, L. R. 2 C. A. 670. *Supra*, Nos. 173, 182, 303, 430. See also *Anonymous*, 13 W. R. 104, Nos. 79, 253.

432. A deed of assignment by one of a partnership for the benefit of all his creditors where there are no separate creditors, is such a valid deed as may be registered, notwithstanding that the other partner does not join in it. *Ex parte King*, 19 L. T. N. S. 294, Court of Bankruptcy.

433. A. B. and C. were, by order of the Court of Chancery, appointed trustees of a trust fund invested in consols. The business of the trust, such as the receipt of the dividends accruing due on the trust fund and the like, had for some time prior to their appointment been conducted by the Union Bank. The new trustees continued the Union Bank as the bank of the trust, and authorised them, by power of attorney and memorandum of instruction, to receive the dividends due on the trust fund and otherwise to transact the business of the trust.

An order being made by the Court for the transfer of the trust fund into Court, the trustees authorised D., who was a partner of C. in a banking firm, to transfer the fund into Court, and for this purpose they signed and sent to him a power of attorney and a memorandum of instruction. The power of attorney and the letter of instruction accompanying it only authorised D. to transfer the fund, not to receive any dividend becoming due upon it. In January, 1866, a dividend became due on the fund. D., acting under the directions of C., received this dividend and paid it into the bank of C. and

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D. C. and D. shortly afterwards failed and executed a deed of inspectorship under the Bankruptcy Act, 1861.

Held (1), that C. alone of the trustees was liable for the loss, and must replace the dividend.

Held (2), that this was a separate debt and a separate liability of C.'s, and that consequently the deed of inspectorship (which was admitted to be for the benefit of and to be confined to the joint creditors of the firm) did not bind the separate creditors, *Newton* v. *Hutton*, 19 L. T. N. S. 471.

434. To an action on a promissory note, the defendants James and Frances pleaded a deed under s. 192 of the Bankruptcy Act, 1861, whereby, after reciting that they had carried on business in partnership, all their property was assigned to trustees in trust to pay a composition to the joint creditors of the two and to the separate creditors of James; and the plea averred that the requisite majority in number and value of the joint creditors of the two defendants and of the separate creditors of James had assented to the deed; that there were no separate creditors of Frances; and that all things had been done to make the deed binding on all the creditors.

The plaintiffs replied, setting out the promissory note declared on, which was the joint and several note of the two defendants,—the defendants rejoined that the note was given on account of and by way of security for a debt due to the plaintiffs from the defendants jointly. On demurrers to the pleas and replications and rejoinders respectively :—

Held, by Byles, Keating, and Montague Smith, JJ. (Bovill, C.J., dissenting), that, there being no separate creditor of Frances distinct from the joint creditors, but only a liability on her part to be sued separately upon a note given by way of security for a joint debt, the deed, which discharged the joint debt, necessarily discharged the several liability also.

Held, by Bovill, C.J., that the effect of the note being to create a separate legal debt on the part of Frances, the deed was no discharge as to that debt; and that, as the deed did not bind all the creditors, it did not bind any non-assenting creditors.

Held, further, that the replication was no departure, as it did not set up the separate liability as the cause of action, but only for the purpose of defeating the plea, and thus maintaining the cause of action stated in the declaration. *Rixon* v. *Emary*, L. R. 3 C. P. 546, But qu. ?

435. A deed of inspectorship recited that the debtor was indebted upon a bill of exchange, and that the holders had abandoned proceedings which they had taken on it in bankruptcy, on a guarantee of a surety to pay "what should be found due by arbitration on the bill." The bill holders were also general creditors of the debtor on a distinct account. The inspectorship deed empowered the inspectors to carry into effect the arrangement for arbitration, and to pay in full what the arbitrator might find due. It also contained a covenant on the part of the creditors to indemnify the inspectors by contributions in proportion to the debts due to the creditors respectively.

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Held, that the bill holders could only be called on to contribute in respect of their general debt, and that the amount due on the bill could not be taken into account. *Cheeseborough* v. *Wright*, 4 De G. F. & J. 152.

436. To an action upon a promissory note, the defendant pleaded a deed of composition under s. 192 of the Bankruptcy Act, 1861, by which the first clause provided that a previously executed deed of inspectorship between the same parties should cease and be void; and the subsequent clauses provided for the deposit with the inspectors of the same composition within a month in lieu thereof. The plaintiff assented to neither deed, and the defendant paid to the inspectors a part of the composition in money and part on bills.

Held, that a plea setting out the composition deed, and referring to the inspectorship deed, was good, and that the payment of the composition need not necessarily be in cash. *Emptage* v. *McCulloch*, 17 L. T. N. S. 67.

437. A deed of inspection under s. 192 of the Bankruptcy Act, 1861, provided: 1. That the inspectors should from time to time pay a dividend to the creditors, and should retain a sufficient sum for the purpose of paying a rateable dividend to any creditor who should not have executed the deed, and should pay such dividend to such creditor upon his request in writing. 2. That it should be lawful for the inspectors to authorise or require the debtor to enter into or undertake any new contract in the way of his trade or business, which the inspectors might think likely for the benefit of the creditors. 3. That if any creditor should, whilst the deed was in force, commence any action against the debtor, the deed should have the same force as an order of discharge in Bankruptcy, and should accordingly be pleadable in bar. And the creditors covenanted that when the inspectors should, in writing, certify that the liquidation provided by the deed had, as far as possible, been concluded, or that the debtor had made a conveyance of his estate and effects according to his covenant in that behalf, then such certificate should be conclusive evidence of the facts therein certified, and upon the giving of such certificate the debtor should be absolutely released from all his debts.

Held, on the authority of *Corner* v. *Sweet*, Law Rep. 1 C. P. 456, that the deed was pleadable in bar as a defence to the action. *Bailey and Others* v. *Bowen*, L. R. 3 Q. B. 133.

438. A deed made in the form of Schedule D to the Bankruptcy Act, 1861, and registered under s. 192, cannot be pleaded as an equitable bar to an action of debt by a non-assenting creditor. *Wright* v. *Jelley*, L. R. 4 Ex. 9.

439. To a declaration for goods sold and delivered, the defendant pleaded a deed under s. 192 of the Bankruptcy Act, 1861, dated the 25th June, 1867, whereby the debtor and a surety covenanted to deliver to the creditors on the day of the date of the deed, promissory notes, signed by the debtor and a surety, for a composition upon their debts, and the creditors, in consideration of the premises, released the debtor from all debts due to them. The release was followed by the following clause: "Provided, that if the said debtor and

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the surety shall not, within two calendar months from the 17th June, 1867, make and deliver the said promissory notes unto the said creditors, according to the true intent and meaning of these presents; then and in such case these presents shall thereupon become absolutely void and of no effect, and the said creditors respectively shall be restored to their original rights, as if these presents had not been made, provided that the said creditors shall personally, or otherwise, apply for their said notes." The defendant did not deliver the notes either on the day of the date of the deed, or within two months after the 17th June, 1867, but the plaintiffs never personally, or otherwise, applied for them.

Held, that the release was not avoided by the non-performance of the covenant to deliver the notes on the day of the date of the deed, being wholly independent of the performance thereof; that the release was not avoided by the non-delivery of the notes within the two months, inasmuch as the plaintiffs had not applied for them; and that there was nothing unreasonable in the proviso with respect to the application for the notes, and the deed was therefore good. *Solomon* v. *Laverick*, 17 L. T. N. S. 545. See on the last point, *Blumberg* v. *Rose*, 4 H. & C. 311: L. R. 1 Exch. 232. *Supra*, No. 45.

440. By a composition deed under the Bankruptcy Act, 1861, executed in March, 1867, the defendant, after assigning all his effects for the benefit of his creditors, contracted to pay them a composition of 7*s*. 6*d*. in the pound on their debts, in three instalments of 2*s*. 6*d*. each, the first and second instalments to be secured by his own promissory notes at three and six months respectively, and the third instalment by the joint and several promissory note of himself and a surety. The deed contained a conditional release by the creditors of the defendant from his debts, and a covenant by the creditors not to sue, and also a proviso that if the notes, or either of them, were not paid when due, the said conditional release and covenant should be absolutely void. The notes became due respectively on the 4th June, the 4th September, and the 4th December, 1867. After the second note had become due—namely, on the 17th September—the plaintiffs who were creditors of the defendant and who had not executed the deed, assented to the deed, and took from the defendant three promissory notes under its provisions for the amount of the composition on their debt. Two of such notes, namely, those for the first and second instalments, were then overdue, but were not paid to the plaintiffs until some three or four weeks after the 17th September.

In an action by the plaintiffs against the defendant to recover the balance of their debt, it was

Held that, as the release was expressly made conditional on the punctual payment of the promissory notes, and the defendant had failed to pay the first and second of such notes, which were payable instanter on their delivery to the plaintiffs, for some three or four weeks after delivery, according to the strict letter of the deed, the release became inoperative and could not be pleaded as an answer to the action, and that the plaintiffs therefore

were entitled to maintain the verdict which had been entered for them at the trial. *Milligan* v. *Salmon*, 18 L. T. N. S. 887. GENERAL EFFECT OF DEEDS.

441. Where a deed under s. 192 of the Bankruptcy Act, 1861, conveys all the estate and effects of the debtor to trustees, to be held and administered by them for the benefit of the creditors, as if the debtor had been adjudicated bankrupt, the title of the trustees has, by virtue of s. 197, relation back; and they can bring trover for goods fraudulently transferred by the debtor before the execution of the deed, without doing any act to avoid the transaction. *Exley* v. *Inglis*, L. R. 3 Ex. 247.

442. Where after the issuing of a judgment debtor summons and before adjudication the debtor executes and duly registers a deed of inspectorship with his creditors, the Court will not adjudicate the debtor a bankrupt under the Bankruptcy Act, 1861, s. 83, at the instance of the judgment creditor. *Anonymous*, 16 W. R. 966, Court of Bankruptcy.

443. In an action of debt, the defendant pleaded a deed between himself, a trustee, and all his creditors, by which the defendant covenanted with the creditors respectively, if the deed were duly registered under the Bankruptcy Act, 1861, to pay to each of his creditors such sums as should in the aggregate be at the rate of two shillings in the pound upon the amount which would have been proveable against him if he had become bankrupt at the date of the registration, by two instalments of one shilling each. And it was agreed that the trustee should hold the defendants' property, already assigned to him, in trust for the defendant until default; provided that, if default was made in payment of the composition on any instalment thereof, the trustee should sell and apply the proceeds, *inter alia*, in payment rateably of the debts due to the creditors. The creditors for themselves respectively released the defendant from the debts due to the creditors respectively; and it was agreed and declared that in case default should be made, contrary to the covenant, in payment of the composition, or any instalment thereof, to the creditors respectively, then the release should be at an end, and the creditors should be at liberty to sue for the full amount of their respective debts, less any amount already received. The plea then averred that the deed had been duly registered under s. 192, and the plaintiff was bound thereby. The plaintiff replied that the instalments due to divers creditors, other than the plaintiff, had not been paid or tendered. On demurrer:—

Held that, upon the construction of the deed, the release was an absolute release by each of the creditors of his own debt, subject to be avoided as against him if the instalments due to him were not paid; that the plea was therefore good without alleging such payment or tender; and that the replication was bad.

The plaintiff also replied on equitable grounds, that he was not an assenting creditor; that at the time the deed was executed the defendant was possessed of available assets sufficient to pay a much larger composition than two shillings in the pound; that the deed was not *bonâ fide* entered into or assented to by the majority of creditors for the equal benefit of all the

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defendants' creditors, but was entered into and assented to by such majority solely from motives of benevolence and kindness to the defendant, and for his sole and only benefit, and without just regard to the rights and interests of the other creditors of the defendant. On demurrer:—

Held a good replication, as showing the deed was not valid within s. 192, on the authority of *Ex parte Cowen* (L. R. 2 C. A. 563); *Hart and Another* v. *Smith*, L. R. 4 Q. B. 61.

444. In a mortgage deed a third party joined as surety, but for the due payment of interest only, and the principal and surety entered into a joint and several covenant with the creditor to pay the interest. Afterwards the debtor executed a deed registered under the Bankruptcy Act, 1861, whereby he assigned all his property upon trust for creditors, and the creditors released the debtor from all debts, with a proviso that nothing therein contained should affect any mortgage held by any creditor, or any right or remedy which any creditor might have against any other person in respect of any debt due by the debtor either alone or jointly with any other person:—

Held, that the effect of the deed was to give a qualified release, and not to extinguish the debt; and that the remedy of the creditor against the surety for interest, was not barred. *Green* v. *Wynn*, L. R. 7 Eq. 28.

445. To a declaration for goods sold and delivered, the defendants pleaded a deed of composition under the Bankruptcy Act, 1861, by which the defendants agreed to pay 10*s*. in the pound on all their debts, payable by instalments of 2*s*. 6*d*. at certain dates, and the creditors agreed to accept the composition in full satisfaction of their respective debts, and on payment of it to execute a release, and not to molest or sue the defendant for any claim, unless default should be made by the defendants in payment of the instalments; and it was agreed that if any creditor should sue contrary to this clause, the deed might be pleaded in bar of the action. The plea then alleged that the defendants were ready to pay the first instalment, but the plaintiffs refused to accept the same, and exonerated the defendants from paying or tendering it, and wholly refused to consent to or approve of, or become parties to the deed. On demurrer,

Held, that the plea was good without payment into Court. *Bamford* v. *Clewes*, L. R. 3 Q. B. 729.

446. Payment into Court by a garnishee under a judge's order, is a payment within the meaning of the Common Law Procedure Act, 1854, s. 65, and discharges the garnishee: and the subsequent execution of a composition deed by the debtor will not prevent the creditor being entitled to the money so paid into Court.

A. having signed judgment against B. (a solicitor), obtained a garnishee order against C. who owed B. a bill of costs; C. obtained further time for taxing the bill on payment into Court of £25. B. subsequently, and before the taxation was complete, executed a composition deed, and gave notice to C. not to pay the amount of the bill to A.

The bill when taxed was found to exceed £25.

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On an application by C. for the repayment to him out of Court of the £25,

Held, that the payment into Court was within the 65th section of the Common Law Procedure Act, 1854, and discharged C. as against B., and that A. was entitled to the £25. *Culverhouse* v. *Wickens; Clark, Garnishee*, L. R. 3 C. P. 295.

447. A certificate of the registration of a deed under the Bankruptcy Act, 1861, does not, by virtue of s. 198, protect the debtor from arrest for debts not bound by the deed, nor the sheriff in releasing him, at least without due inquiry.

To an action for an escape, the defendant pleaded that the debtor produced a certificate of the registration of a deed, within s. 198 of the Bankruptcy Act, 1861. Replication that the judgment was subsequent to the registration, of which fact the defendant had notice, and which was stated on the writ of *ca. sa.*; that it was obtained on a debt which became due subsequently to the registration; and that the plaintiffs were not creditors under the deed in respect of the debt, as the defendant might with due care have known:—

Held, on demurrer, a good replication. *Williams and Another* v. *Rose*, L. R. 3 Ex. 5.

448. A debtor executed and registered a deed under s. 192 of the Bankruptcy Act, 1861, and was subsequently arrested upon a *ca. sa.* on a judgment recovered in respect of a cause of action which first accrued after the execution and registration of the deed. The debtor produced to the officer who arrested him the certificate of the registration of the deed, and was thereupon discharged from custody. In an action by the creditor against the sheriff for an escape:—

Held, on demurrer, that the production of the certificate did not justify the sheriff under s. 198 in releasing the debtor. *Dignam* v. *Baily*, L. R. 3 Q. B. 178.

See, as to this and the last case, *Rossi* v. *Bailey*, L. R. 3 Q. B. 621: *supra*, No. 429.

449. The goods of the defendant were seized on the 16th June, under a *fi. fa.* issued on a judgment for a debt above £50, and were sold by the sheriff on the 8th July. On the same day (8th July) the defendant executed an inspectorship deed of his estate under the Bankruptcy Act, 1861, and on the following day, the 9th July, filed a petition in bankruptcy, and thereupon an adjudication in bankruptcy was on that day made against him as a trader debtor on a judgment debt above £50. The proceedings in bankruptcy were stayed from time to time under the provisions of s. 199 of the Bankruptcy Act, 1861, until the registration of the inspectorship deed, which took place on the 5th August; immediately after which, on the 9th August, the petition was dismissed and the bankruptcy annulled.

The sheriff, being in doubt as to the proper disposal by him under sect. 73 of the Bankruptcy Act, 1861, of the proceeds of the sale of the defendant's

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goods under the *fi. fa.*, paid the amount into Court, and, on a rule to show cause why the same should not be paid out to the inspectors under the deed or to the defendant himself, it was

Held (refusing the rule), that in accordance with the provisions of sect. 73 the money belonged to the plaintiff, the execution creditor, from the 15th July, seven days after the sale of the goods under the *fi. fa.* on the 8th: and that he and he alone was entitled to it. On the bankruptcy being annulled, the assignees ceased to have any title, and the sheriff held the money for the benefit of the execution creditor. *Diggles* v. *Austin*, 18 L. T. N. S. 890.

450. At a meeting of the creditors of a debtor a resolution was passed whereby it was agreed to accept 8*s.* in the pound payable by three instalments, "provided the last instalment be secured," and assents were signed in accordance with this resolution. Before such security had been provided and accepted by the creditors, one of them issued execution and seized the debtor's goods. The deed whereby proper security was given was subsequently executed by the necessary majority of creditors.

Held, that the acceptance of the security provided by the deed did not relate back to the date of the assents so as to make the assents operate as though the security had been specified therein, and thus affect non-assenting creditors on the ground that the question, whether the levy was good or bad, could not be left exposed to the uncertainty whether or not the assenting creditors would at a future time accept the security which might be offered them.

Held also, that evidence which goes to show that a fiduciary relation exists between a debtor and his surety is admissible notwithstanding all assents accepting such security are in writing. *Osborne* v. *The Swan Bank Brick and Coal Company* (*Limited*), 17 L. T. N. S. 96, Todmorden County Court, overruled on the first point on appeal by the Court of Common Pleas, *sub nom. Horsfall* v. *The Swan Bank Brick and Coal Company* (*Limited*), 16 W. R. 934: 18 L. T. N. S. 409.

451. A deed under s. 192 of the Bankruptcy Act, 1861, was expressed to be made between the debtor and certain persons named in the schedule as creditors and all other the creditors of the defendant, and was executed by a majority in number representing three-fourths in value of the debtor's creditors, and was then registered; after registration the names of two additional creditors of the debtor were inserted in the schedule.

Held, that there was no material alteration of the deed, and that, as the requisite number had assented before registration, the insertion of the names of the two creditors after registration did not affect the validity of the deed. *Wood* v. *Slack*, L. R. 3 Q. B. 379. *Supra*, No. 385, where see cases cited.

452. An action cannot be maintained against a sheriff for negligence in not levying under a *fi. fa.* without showing actual pecuniary damage; and although *primâ facie* the measure of damage is the value of the goods which might have been and were not levied, yet it is for the jury to say,

looking at the probabilities of the case, whether or not, if the execution had been levied, the plaintiff would have derived any benefit from it, by reason of the other creditors of the execution debtor being in a position to make him bankrupt. GENERAL EFFECT OF DEEDS.

A conveyance by a debtor of his goods to two creditors for the benefit of themselves and the other creditors passes the property at once, on the execution of the deed by the debtor, without any assent on the part of the trustees; but the knowledge of the debtor, at the time of making the deed, that a writ of execution is out against his goods, must be taken to be the knowledge of the trustees within the proviso of sect. 1 of the Mercantile Law Amendment Act, 1856; and consequently the trustees' title is not protected by that section, and the goods are bound by the delivery of the writ to the sheriff. *Hobson* v. *Thelluson*, L. R. 2 Q. B. 642. See next case, and also *Symons* v. *George*, 3 H. & C. 68, 996; *Pfander* v. *Richardson*, 1 Weekly Notes, 335; *Ponsford* v. *Walton*, L. R. 3 C. P. 167. *Supra*, No. 386.

453. On an interpleader issue it appeared that the defendant, having recovered judgment against one Prior, Prior executed a deed, by which he and the plaintiff covenanted to pay a composition of two shillings in the pound to his creditors, and he conveyed to the plaintiff all his property upon trust—first, to pay costs; secondly, to reimburse himself all moneys paid by him in respect of the composition, with an ultimate trust of the surplus for the debtor. The deed was expressed to be intended to operate under s. 192 of the Bankruptcy Act, 1861. After the execution of this deed the defendant levied on the property comprised in it.

Among the assents necessary to the validity of the deed under s. 192, was one given by one creditor on behalf of himself and others, without prejudice to their rights under a former trust deed. The deed so referred to was not produced.

The Court of Exchequer held, that the assent being qualified was not a valid assent within s. 192; but that the deed, notwithstanding the expressed intention that it should operate under the Act, was not an escrow, and that notwithstanding the failure of that intention it effectually conveyed the property to the plaintiff; and they discharged the rule. *Johnson* v. *Osenton*, 4 W. N. 32.

454. The inspectors appointed by a deed of inspectorship registered under the Bankruptcy Act, 1861, filed a bill against the debtor, alleging that he was dealing with his assets in a manner contrary to the covenants of the deed; that they were unable to prevent his proceedings; and that irreparable mischief would result from them; and praying for the appointment of a receiver.

Held by the Lords Justices (affirming the decision of Giffard, V. C.), that the Court of Chancery had jurisdiction to appoint a receiver, though it might have no jurisdiction to administer the assets. *Riches* v. *Owen*, L. R. 3 C. A. 820.

455. R. being lessee of certain oil works executed an assignment for the

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benefit of his creditors, but the lease was excepted, and, instead of indorsing it, R. covenanted to demise it to such person as the trustees of the deed should direct. R. became bankrupt, and the trustees of the assignment having sold the lease, R. refused to perform his covenant. On bill filed in Chancery to compel him,

Held, by the Vice-Chancellor Malins, that he was a bare trustee, and a decree made with costs. *Frazer* v. *Radloff*, 19 L. T. N. S. 275.

456. Where the trustees of a trust deed registered under the Bankruptcy Act, 1861, have all died, there being no power in the deed of appointing new trustees, the Court of Chancery has jurisdiction, under the Trustee Acts, to appoint new trustees. *In re Price's Trust Deed*, L. R. 6 Eq. 460; followed by the Master of the Rolls in *In re Bache's Trust Deed*, 16 W. R. 1078.

457. The administration of the trusts of a creditors' deed, which has been assented to and registered so as to render it valid and binding under the provisions of the Bankruptcy Act, 1861, s. 192, belongs exclusively to the Court of Bankruptcy. *Bell* v. *Bird*, L. R. 6 Eq. 635. See next case.

458. The ordinary jurisdiction of the Court of Chancery over trust deeds is not ousted by the Bankruptcy Act, 1861, in respect to deeds of inspectorship under that Act, but the Court of Chancery has in respect of such deeds a concurrent jurisdiction with the Court of Bankruptcy.

The Court of Chancery will not exercise such jurisdiction unless the circumstances of the case and the convenience of the parties require it. *Martin* v. *Powning*, 17 W. R. 250, 19 L. T. N. S. 474, reversed on appeal by the Lords Justices, 19 Feb. 1869.

459. Where, after a decree in Chancery for a perpetual injunction against a defendant, and for an account subject to the trial of an issue as to the validity of a patent, the defendant executed a deed of assignment of all his goods, chattels, stock in trade, books, and vouchers to trustees, to operate for the benefit of his creditors under s. 192 of the Bankruptcy Act, 1861, and it was thereby declared that it should operate for their benefit in like manner as if he had been adjudged bankrupt,

An order of course obtained, reciting that the suit had become defective by the deed, and ordering that the decree should be prosecuted between the plaintiff and the trustees, as if they had been named in the suit instead of the defendant, is irregular, and will be discharged with costs. *Bovill* v. *Goodier*, 3 W. N. 35.

460. The rule of equity that, in the case of a bankrupt plaintiff, notice of a motion to dismiss for want of prosecution must be served on his assignee, does not apply to a plaintiff who has executed a deed of arrangement which is not binding on dissentient creditors. *Pickering* v. *Cape Town Railway Company*, 17 W. R. 276.

461. M. being a customer of the M. Bank, and wishing to overdraw, procured T. to guarantee £300, which guarantee it was declared should extend to all future sums due on the general balance of account, no indulgence or time given to M. to discharge the surety's liability, all dividends, composi-

tions, &c., received from M. to be treated as payments in gross, and the guarantee to be a running and continuing one. M. owing the bank £410 4*s.* 10*d.* on the overdrawn account, executed a deed under the Bankruptcy Act, 1861, and having given a counter security to T., T. (being a trustee of the deed) realised it, and paid the bank the £300.

On a bill filed to carry out the trusts of the deed, and raising the question whether the bank was entitled to receive a dividend on the whole sum overdrawn or only on the balance,

Held, that they were entitled to a dividend on the whole sum until the debt was satisfied. *The Midland Banking Company (Limited)* v. *Chambers*, 19 L. T. N. S. 548.

462. In a suit by a first mortgagee, where the mortgagor had executed a creditor's deed, but his judgment creditors, subsequent to the first mortgage, had not acceded to it,

Held, that the trustees of the deed did not represent them under the 15 & 16 Vict. c. 86, s. 42, r. 9. *Knight* v. *Pocock*, 24 Beav. 436.

463. W., E. and J. mortgaged their interests under a residuary gift to B. as a security for the debt of W.; and E. and J. took a second mortgage on W.'s interest to indemnify them against the consequences of their joining in the first mortgage. Afterwards W. assigned his interest in the same property to three trustees for certain scheduled creditors. On a bill by E. and J. against B. to redeem the mortgaged property,

Held, that the creditors named in the schedule were necessary parties, and were not sufficiently represented by the two surviving trustees alone.

That the circumstance that the trustees were parties, not only in that character, but also as being themselves creditors, did not render them sufficient representatives of the absent creditors, who were fifty-four in number, and especially inasmuch as one of the trustees had also another and distinct mortgage on the equity of redemption.

That the defect of parties was not supplied by a supplemental suit bringing before the Court a few of the other creditors to which supplemental bill the trustees were not parties. *Holland* v. *Baker*, 3 Hare, 68.

464. A creditors' deed in the form given in Schedule D to the Bankruptcy Act, 1861, has the same effect as to vesting property in the assignee as a bankruptcy, and the assignor is therefore an unnecessary party to a suit instituted by the assignee for the specific performance of an agreement subsisting between the assignor and the defendants prior to the execution of the creditors' deed. *Fenton* v. *The Queen's Ferry Wire Rope Company (Limited)*, 17 W. R. 155.

465. Where a deed of assignment for the benefit of creditors has been duly executed and registered under the 192nd section of the Bankruptcy Act, 1861, the Court will not assume that a non-assenting creditor who has obtained judgment against the debtor will, without the leave of the Court, take steps for the purpose of rendering process available.

And the Court refused an application for an injunction made on the allegation that such steps were about to be commenced.

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Quære, whether, if the circumstances justified the application, the Court would have the power to grant the injunction. *Ex parte M., Re a Deed of Assignment*, 17 W. R. 17, Court of Bankruptcy. See *Harding* v. *Inskip*, 19 L. T. N. S. 609: L. R. 4 Ex. 80. *Supra*, No. 415.

466. A deed of composition duly registered by a person who has filed an admission of debt on a trader-debtor summons issued against him, is such a paying or compounding as will bar an act of bankruptcy and petitioning creditor's debt.

Where the validity of such a deed as above is intended to be disputed, so as to establish an act of bankruptcy, the leave of the Court must first be obtained.

Where an *ex parte* adjudication in bankruptcy has been declared against a compounding debtor as above, it is not necessary for him to obtain an order to stay proceedings in bankruptcy before disputing the adjudication.

An adjudication in bankruptcy is equivalent to an execution at Common Law so far as it concerns the validity of a deed of composition. *Ex parte Trickett*, 19 L. T. N. S. 267, Court of Bankruptcy.

467. The Court in London has no power to review the decision of a district court. Parties mistaking their remedy must pay costs. *Ex parte Bray, Re a Deed of Composition*, 19 L. T. N. S. 149, Court of Bankruptcy.

468. The 136th section of the Bankruptcy Act, 1861, gives the Court jurisdiction over "any person claiming under a trust deed," in the same way as under a bankruptcy, and the Court has power under that section to determine a question of lien, and by the 128th section of the Bankrupt Law Consolidation Act, 1849, to order the transfer into the names of the trustees of shares belonging to one of the debtors. *Ex parte The Trustees, Re Price, Maryatt & Co.*, 16 W. R. 581, Court of Bankruptcy.

469. The trustee of a creditors' deed took possession of a house which belonged to the debtor, and of which the debtor had the key. The debtor brought an action against him for assault, for conversion of certain tools in the house, and for the breaking into the house, and obtained a verdict on the first two grounds but failed on the third. The trustee included in his accounts the costs paid by him to the plaintiff, and his own costs of the action; and the accounts were approved by a majority in number and value of the creditors assembled in a meeting called for the purpose of examining them. A creditor afterwards applied to the Commissioner to have these items disallowed and to oblige the trustee to pay a further dividend.

Held (affirming the decision of the Commissioner), that the costs must be allowed, for that the resolutions mentioned in the Bankruptcy Act, 1861, s. 136, need not be resolutions come to before the Commissioner, and that there was nothing so unjust or inequitable in a resolution sanctioning the allowance as to authorise the Court to pronounce it not to be binding. *Ex parte Pilkington, In re Webster*, L. R. 3 C. A. 404. See *Fitzpatrick* v. *Bourne*, L. R. 3 Q. B. 233, 446. *Supra*, No. 355.

470. Costs incurred upon the discovery of the falsehood of a representation

in order to reverse the consequence of the representation, are too remote an injury to be included in a verdict upon an action for fraud. GENERAL EFFECT OF DEEDS.

It devolves upon the plaintiff to show actual loss to himself in such an action, and without proof of that loss, a verdict cannot be entered for nominal damages.

In an action by a creditor against the trustee and assignee of a debtor under a composition deed for procuring the plaintiff's assent to the deed by a false representation,

Held, that the costs incurred by the plaintiff in unsuccessfully petitioning for the adjudication of the debtor as a bankrupt on the ground of fraud, were too remote a consequence of the defendant's false representation to be a ground of action, and that without proof of actual loss to the plaintiff a nominal verdict for him could not be entered. *Hyde* v. *Bulmer*, 18 L. T. N. S. 293.

471. Where a fund was assigned to trustees upon trust to pay a fixed sum annually to creditors *pro ratâ* with interest till payment,

Held, that the assignor was entitled to deduct income-tax on the payments in respect of interest. *Crane* v. *Kilpin*, L. R. 6 Eq. 334, overruling *Ex parte Turner, Re Lascelles*, 13 W. R. 104: *suprà*, No. 342.

472. Where a verdict is obtained against a defendant in an action of contract, and he on the same day executes a composition deed under the Bankruptcy Act, 1861, s. 192, the plaintiff is entitled to the composition on the amount of his taxed costs, although judgment in the action is signed after the issuing of the certificate of registration. *Ex parte Browning, Re Enefer*, 16 W. R. 248, Court of Bankruptcy.

473. An assenting creditor to a deed of composition, made in accordance with the Bankruptcy Act, 1861, s. 192, who had received a portion of the composition, is entitled to prove against the estate of the debtor, on his being adjudicated a bankrupt, giving credit for the portion of the composition received by him. *Re Wright*, 19 L. T. N. S. 149, Court of Bankruptcy.

474. W., the treasurer of a union, lodged the union moneys to his account as treasurer at a bank in which he was a partner. The partners assigned their property to trustees to be administered as in bankruptcy. The guardians of the union called on W.'s sureties to pay the balance due from him, and they paid it. The sureties then received a dividend on a proof made in W.'s name against the joint estate. After this they claimed to prove against W.'s separate estate.

Held (reversing the decision of the Commissioner), that the claim must be rejected, without prejudice to any application to expunge the joint proof, and substitute a proof against the separate estate. *Ex parte Carne, In re Whitford*, L. R. 3 C. A. 463.

475. A firm in Charleston applied to a firm in Liverpool to raise the necessary funds for the purchase of cotton in America for sale in England, at the risk of certain speculators for whom they acted, and the Liverpool firm applied to an English bank for an advance for that purpose. An arrangement was accordingly made, under which the Charleston firm drew upon an

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American branch of the bank for the amount required, purchased the cotton, consigned it to the Liverpool firm, drew bills upon that firm, and indorsed them to the bank. At the same time the cotton was consigned to the Liverpool firm, who accepted the bills drawn upon them by the Charleston firm, and the bills of lading were indorsed by the Charleston firm to the bank as security for their advance. Afterwards the Liverpool and Charleston firms became insolvent, and the affairs of the former were wound up under a deed of inspectorship under the Bankruptcy Act, 1861, s. 192. The value of the cotton was insufficient to cover the acceptances of the Liverpool firm :—

Held, that the transaction was a joint adventure of the Charleston and Liverpool firms, and that they were jointly interested in the cotton, and consequently that the bank could prove against the estate of the Liverpool firm for the sum advanced without giving up their security. *Ex parte English and American Bank, In re Fraser, Trenholm, & Co.*, L. R. 4 C. A. 49.

476. There were two firms of Kelson & Co., one consisting of five partners, carrying on business in London, and the other consisting of the five partners in the London firm and two others, carrying on business in Alexandria. The Alexandria firm were in the habit of drawing bills, which were accepted by the London firms, and many of them were held by the Egyptian Trading Company. The London firm on the 20th June, 1865, executed a deed of inspectorship, which provided that the assets should be distributed as in bankruptcy, was registered on the 20th July. Between those two dates the Egyptian Trading Company sued the Alexandria firm on one of the bills for £3,000, issued execution, and obtained the £3,000.

Held by the Lord Chancellor on appeal, that a claim by the inspectors to have the £3,000 brought into the estate before the company were allowed to prove, was inadmissible; and that (in the silence of the deed on the point) the company must deduct the £3,000 sum before they could be admitted to prove their debt against the London firm. *In re Kelson*, 3 W. N. 153.

477. The plaintiffs were in the habit of drawing bills upon merchants in Bombay, and handing them to the defendants, bankers in London, for collection by the defendants' Bombay branch, the proceeds when received being remitted by the Bombay branch to the plaintiffs through the defendants' house in London. The plaintiffs executed a deed of inspectorship under the Bankruptcy Act, 1861, the defendants then having in their hands £3,248 of the plaintiffs', the proceeds of bills collected in Bombay. At the same date the plaintiffs were indebted to the defendants on certain bills of exchange in the sum of £8,335.

Held, a case of mutual credit within s. 171 of the Bankrupt Act, 1849. *Young* v. *Bank of Bengal* (1 Moo. P. C. 150), distinguished, *Nuoroji* v. *Chartered Bank of India*, L. R. 3 C. P. 444.

478. H. T. & Co. were the factors in London of A. S. & Co., who were coffee planters in Ceylon. The course of business between them was for A. S. &

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Co. to consign coffee to H. T. & Co. for sale on account of A. S. & Co., and to draw bills on H. T. & Co. against the consignments, which bills H. T. & Co. accepted on the security of the consignments, and H. T. & Co. applied the proceeds of sale of the consignments in taking up their acceptances, and remitted the balance, or accounted for it to A. S. & Co. In July, 1866, H. T. & Co. stopped payment and executed a deed of arrangement with their creditors. Previously to this H. T. & Co. had deposited with their brokers, T. & R., five bills of lading representing consignments of coffee, in respect of which H. T. & Co. had accepted bills for A. S. & Co. to secure a debt due from H. T. & Co. to T. & R. H. T. & Co. at the same time deposited with T. & R. for the same purpose other securities in which A. S. & Co. had no interest. After the stoppage of H. T. & Co., T. & R. sold the coffee represented by the five bills of lading for a sum of money more than enough to pay off the debt due from A. S. & Co. to H. T. & Co., but not enough to pay off the debt due from H. T. & Co. to T. & R.

Held, that A. S. & Co. were entitled to have the securities which had been pledged with T. & R., marshalled so as to throw the debt due from H. T. & Co. to T. & R. primarily upon those securities in which A. S. & Co. had no interest, and that A. S. & Co. were entitled to be recouped the surplus proceeds of the sale of the coffee out of the surplus proceeds of the sale of the other securities. *Ex parte Alston, Re Holland*, 19 L. T. N. S. 542, 17 W. R. 266.

479. M. held 800 shares in a company. On the 2nd of March, 1866, the company accepted three bills for £500, each drawn by him upon them payable three months after date. These bills were drawn and accepted in respect of advances made by M. on behalf of the company. On the 28th of May, 1866, an order was made to wind up the company.

On the 1st of June, 1866, M. executed a deed of arrangement with his creditors, under which C. & H. were appointed inspectors, with whom M. covenanted to get in his estate and divide it rateably among his creditors. Shortly afterwards M. indorsed the three bills to P. for collection, and P. afterwards reindorsed them to C. & H. M. was placed on the list of contributories of the company for the 800 shares, and calls were made on him to the amount of £18,000. C. & H. claimed to prove on the company's estate in respect of the three bills.

Held, that the mutual credit clause in bankruptcy applied to the case, and that the claim on the bills must be set off against the amount due by M. for calls. The claim of C. & H. was therefore disallowed. *Re The Anglo-Greek Steam Navigation and Trading Company (Limited) Claim of Carralli and Haggard*, 17 W. R. 244.

480. A deed of composition is not invalid or fraudulent where no assets are realised, provided there be a reasonable probability that claims by the debtor will result in assets. The debtor is bound to insert in his schedule a debt due to a public company in liquidation, in respect of shares for the full value of the shares, and not for the amount of calls only.

A claim for set-off in respect of a dispute between the debtor and the

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company as to the number of shares held by the former, is barred by the settled list of contributories.

A deed executed and registered between verdict and judgment, ought to be pleaded in arrest of judgment.

Where the debtor and his solicitor attended in obedience to a summons, and made an objection thereto on a matter of form, the objection was held to have been waived. *Ex parte Anonymous, Re a Deed of Composition*, 19 L. T. N. S. 73, Court of Bankruptcy. S. C. on appeal, *nom. Ex parte Pickering, In re Pickering*, L. R. 4 C. A. 58. *Supra*, No. 410, and cases there referred to.

481. Shortly before a company was wound up, a shareholder executed a deed of arrangement with his creditors which contained no *cessio bonorum*, but only covenants by the creditors that they would not enforce payment within two years, and by the debtor that he would pay in full at the expiration of that period. The debtor was at that time liable for two calls made by the company, but he did not include them in the schedule sent in to the Registrar, and another call was subsequently made by the official liquidator.

But held (reversing the decision of the Court below), that having regard to the frame and provisions of the deed, which only applied to debts actually due, the official liquidator might proceed against the shareholder for the subsequent calls. *In re Richmond Hill Hotel Company, Ex parte King*, L. R. 3 C. A. 10. See *Ex parte Wilmot, In re Thompson*, L. R. 2 C. A. 795. *Supra*, Nos. 394 and 420.

482. Under s. 133 of the Companies' Act, 1862, the assets of a company which is being wound up must be applied in satisfaction *pari passu* of the liabilities of the company as they exist at the commencement of the winding up.

Where, therefore, prior to the winding up, a dividend had been paid under an inspectorship deed to some creditors of the company, but not to others,

Held, that there being no question of fraudulent preference, those who had not received any dividend were not entitled to a dividend under the winding up in priority to those who had. *In re Smith, Knight, & Co., Ex parte Ashbury*, L. R. 5 Eq. 223.

483. A. let to B. a defined portion of a room in a factory, with steam-power for working lace-machines belonging to B., at a certain sum per annum, payable quarterly; a deduction to be allowed in the event of hindrances in the supply of power beyond seven days in each quarter.

Held, a sufficient demise to entitle A. to distrain.

By a deed (duly registered) in the form given in schedule D to the Bankruptcy Act, 1861, to which the required majority of the creditors assented, B. assigned all his effects to a trustee, "to be applied and administered for the benefit of the creditors in like manner as if B. had been at the date thereof duly adjudged a bankrupt:"—

Held, that the title of the trustee, under s. 197 of that Act, dated from the execution of the deed; and that a distress for rent levied between that

time and the day of registration could not, by reason of s. 129 of the Bankrupt Act, 1849, be made available for more than one year's rent. GENERAL EFFECT OF DEEDS.

Williams v. *Cadbury* (Law Rep. 2 C. P. 453, *supra*, No. 256), distinguished. *Selby* v. *Greaves*, L. R. 3 C. P. 594.

484. The plaintiff left his chest of plate with his father for safe custody, but kept the key. The father sent the chest to be kept by his banker. The father on being told by the banker that he had overdrawn his account pointed to this chest and another in which were his deeds, and which was also in the custody of the banker, and said, "You have plenty of security there." He subsequently, by deed registered under the Bankruptcy Act, 1861, assigned his property to the defendant for the benefit of his creditors, and the defendant obtained the plate from the banker on paying his claim on the overdrawn account.

Held, that the plate was not in the possession, order, or disposition of the father as reputed owner, within the 125th section of the Bankrupt Law Consolidation Act, 1849, as the banker held it with a lien; and, secondly, that if it were in the possession of the father within that section, it was not so with the consent and permission of the son, who kept the key. *Webb* v. *Whinney*, 16 W. R. 973.

485. In November, 1866, the smack "Emerald" and the smack "Welcome" came into collision, and the "Emerald" was lost. S., the owner of the "Emerald," afterwards commenced proceedings against C., the owner of the "Welcome," in the Court of Admiralty, for the recovery of damages, but negotiations having been entered into between the parties, S., on the 17th January, 1867, received a bill of exchange accepted by C., and payable three months after date for £216, "for statutory loss sustained through the collision." In the same month of January S. arrested the "Welcome" in the suit he had commenced in the Court of Admiralty to enforce his lien, but after retaining possession for about seventeen days he withdrew, and upon C.'s application the proceedings were dismissed with costs. On the 20th of April, C. executed a deed of assignment of all his estate to trustees for creditors, and the bill of exchange accepted by C. was dishonoured upon presentation. In the following month the "Welcome" was sold by C. without the direction of the trustees, who, however, received the proceeds.

Held, that S. had not a lien on the proceeds of the sale in the hands of the trustees. *Re Snell, Ex parte Clarke*, 16 W. R. 307, Court of Bankruptcy.

486. In answer to a trader-debtor summons the defendant made the usual affidavit, that he had a good defence to the demand on the merits, and produced a deed of arrangement duly registered. Upon the validity of the deed being questioned, and a bond asked for, the Court ordered the question of the bond to stand over, pending inquiries into the validity of the deed. *Re a Trader Debtor Summons*, 19 L. T. N. S. 294, Court of Bankruptcy.

487. X. bought hops of T. on a custom known in the hop trade, as W. O.,

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i.e., the hops were to wait the order of X. in T.'s warehouse, and to be charged for warehouse room and insurance. X. paid for the hops by bills of exchange which were dishonoured at maturity. X. afterwards registered a deed of composition which was assented to and executed by T. to the full amount of his debt in respect of the dishonoured bills.

Held, that T.'s assent and execution of the deed operated as a proof in bankruptcy, and therefore an abandonment of his lien for unpaid purchase money. *Ex parte Turnbull, Re Oxley*, 19 L. T. N. S. 463: 17 W. R. 200, Court of Bankruptcy. *Supra*, No. 400, where see cases referred to.

488. U. the prosecutor having employed the prisoner at weekly wages to manage his shop, on the 6th of April executed an assignment of his goods, &c., to one R. for the benefit of his creditors, and for fourteen days R. received from U. all moneys taken in the shop, and the attorney of R. gave the prisoner a written notice of the assignment which authorised him as agent of R. to take and keep possession of the effects in the shop. This paper, on April 21st, when the assignment was registered, was given up to U. and destroyed. After the fourteen days, the money was taken by U. as before, the prisoner continuing to receive from him his wages. On the 6th of July a composition deed was executed by R. and U. reconveying the property to U., but was not registered till August 3. On the 21st of July the prisoner appropriated money at the shop.

Held, that he was properly convicted of embezzlement as the servant of U. *Reg.* v. *Dixon*, 17 W. R. 180.

The following cases in Division XIII. of the Digests, Original and Supplemental, have since been reported in the following places, viz.:—

No. 169. *Ex parte Tomlinson, In re Boyce*, 3 De G. F. & J. 745.
,, 171. *Smith* v. *Dresser*, 35 Beav. 378.
,, 179. *Jones* v. *Morris*, 6 B. & S. 198.
,, ,, *Ex parte Thatcher*, L. R. 2 C. A. 93.
,, 182. *The European Central Railway Company* v. *Westall*, 6 B. & S. 970.
,, 185. *Andrew* v. *Macklin*, 6 B. & S. 201.
,, 189. *Kay* v. *Jones*, 19 C. B. N. S. 416.
,, 190. *Hughes* v. *Palmer*, 19 C. B. N. S. 393.
,, 191. *Fessard* v. *Mugnier*, 18 C. B. N. S. 286.
,, 192. *Buvelot* v. *Mills*, 6 B. & S. 986.
,, ,, *Tetley* v. *Wanless*, L. R. 2 Ex. 21, 275.
,, 193. *Ex parte Morrison, In re Clunn*, 3 De G. J. & S. 232.
,, 194. *Dauglish* v. *Tennant*, L. R. 2 Q. B. 49.
,, 201. *Kitchin* v. *Hawkins*, L. R. 2 C. P. 22.
,, 323. *Macann* v. *Borradaile*, 37 L. J. N. S. Ch. 124.
,, 324. *Montefiore* v. *Enthoven*, L. R. 5 Eq. 35.
,, 326. *Ex parte Cleland, Re Davies*, L. R. 2 C. A. 808.
,, 335. *Ex parte Groome*, 3 De G. J. & S. 249.
,, 336. *Ex parte Cockburn, Re Smith*, 3 De G. J. & S. 175.

SECOND

SUPPLEMENT TO DIGEST

OF THE CASES ON THE 108TH AND FOLLOWING SECTIONS OF THE BANKRUPTCY ACT, 1861 (*a*).

SECTION 108.

xviii. After recovery under the bankruptcy of concealed property of large value, the creditors, upon condition of receiving 20s. in the pound upon their debts, agreed to compromise the misdemeanor, and to change the bankruptcy to arrangement.

Held, that they were at liberty to do so, and that the Commissioner had no power to interfere with or control the discretion either of assignee or creditor. *Re Turner*, 17 L. T. N. S. 318.

xix. The power of the Court of Bankruptcy to annul an adjudication, with the consent of all the creditors who have proved, may be exercised without resorting to the procedure under the 110th and 185th sections of the Bankruptcy Act, 1861, and that power may be exercised in a suitable case after the first meeting of creditors.

Semble, the Court may on sufficient grounds refuse to annul, though all the creditors who have proved assent to the application. *Ex parte Jones*, *In re Jones*, L. R. 3 C. A. 144.

xx. Where the proceedings in a bankruptcy are suspended in consequence of an arrangement with the creditors under the 110th section of the Bankruptcy Act, 1861, although the bankrupt having made a full disclosure of his estate is entitled to apply for his discharge, yet he is not entitled to his discharge as of course, but must submit to be examined, and is subject to the rules of the 159th section. *Ex parte McKerrow* (13 W. R. 1002, *supra*, No. x.), followed, *Ex parte Petrie*, *In re Petrie* (No. 2), L. R. 3 C. A. 610.

xxi. Trustees who were carrying on a trade, and had been admitted to prove in bankruptcy for a debt on behalf of their *cestuis que trust*,

Held, entitled to vote on a resolution for a suspension of proceedings under the 110th section of the Bankruptcy Act, 1861. *Ex parte Prothero*, *In re Barfoot*, L. R. 3 C. A. 823.

(*a*) See text, pp. 284 *sqq.* notes.

SECTION 108.

xxii. After the creditors have passed a resolution under the 110th section of the Bankruptcy Act, 1861, and confirmed it at the adjourned meeting, it is too late for a creditor cognisant of such resolution and present at the meeting to move to dismiss the petition on the ground of error in description in the petition. *Ex parte Partridge Re Mitchell*, 6 L. T. N. S. 339, Court of Bankruptcy.

The following case in the Supplemental Digest has since been reported in the following place in the authorised reports, viz.:—

No. vii. *Ex parte Lee, Re Lee*, L. R. 3 C. A. 150.

SECOND
SUPPLEMENT TO DIGEST
OF THE CASES ON THE 185TH AND FOLLOWING SECTIONS OF THE BANKRUPTCY ACT, 1861, AND THE BANKRUPTCY AMENDMENT ACT, 1868 (*a*).

SECTION 185.

xiv. The proceedings in a bankruptcy having been stayed till a given day, for the purpose of obtaining the assent of the creditors to a deed of arrangement, prepared in pursuance of a resolution passed at a meeting of the creditors held under the provisions of s. 185 of the Bankruptcy Act, 1861, the Court has jurisdiction to stay the proceedings a second time in a proper case. *Ex parte Weston, Re Weston*, 16 W. R. 444, LL.JJ.

(*a*) See text, pp. 293 *sqq.* notes.

APPENDIX.

489. (Division No. XIII.)—A debtor on the 14th of December executed a deed of assignment for the benefit of his creditors, and on the 17th he was adjudicated a bankrupt on a creditor's petition. He thereupon obtained protection. On the same day the proceedings under the bankruptcy were suspended pending the twenty-eight days allowed for registration, and on the 7th of January the bankrupt was arrested on a capias, issued on a judgment obtained in the Lord Mayor's Court, on the 2nd January, in respect of a debt incurred before the bankruptcy.

Upon application being made by the bankrupt for release:

Held, that he had been improperly arrested, and that he was entitled to an order of release, on the condition that he brought no action in respect of his arrest. *Re Smith*, 17 W. R. 351, Court of Bankruptcy.

490. (Divisions Nos. III., VI., X., XIII.)—When it appears to the satisfaction of the Court that a deed of composition has not been duly assented to as required by the statute, and that the debtor's estate will produce a much larger composition than that which becomes payable to the creditors, the Court will order the registration to be cancelled. *Re Wilde*, 17 W. R. 368, Court of Bankruptcy.

See, however, *Ex parte Savin, In re Savin*, L. R. 616: *supra*, Nos. 86, 141, 240, 295, per Turner.

491. (Divisions Nos. III., X., XIII.)—A debtor was sued by two creditors, and, being involved, executed a deed of composition, which was perfected between the issue of the writs of *fi. fa.* at the suit of those creditors, and the sale by the sheriff. The sheriff seized the goods, but they being claimed by the trustees under the deed:

It was held by Mr. Baron Bramwell, at Nisi Prius (following *Rogers* v. *Roberts*, L. R. 2 Ex. 35: *supra*, No. 280), that the deed was a bar to the execution, unless it could be proved that some of the statutory requirements had not been complied with.

Held, further, that for this purpose, in every case of a disputed assent, the debt must be proved in the same manner as if an action had been brought by the creditor against the debtor.

A joint-stock company in the course of being wound up compulsorily

appeared among the assenting creditors in the name of the official liquidator, G.:

Held, that the debtor must prove that G. was, in fact, the official liquidator, and was duly authorised to assent to the deed.

Semble, the official liquidator must himself prove his appointment and authority to assent.

Goods being seized under an execution, and claimed by the creditors under a deed executed before sale, it is for the creditors to begin and show that the goods were not available for the purpose of the execution.

The debtor, a hop merchant, agreed with one of his creditors for the purchase of certain hops which were never delivered, and accepted bills for mutual accommodation. Upon the general account there appeared to be a balance due to the creditor:

Held, that a description of this debt as "goods sold" was a sufficient compliance with the requirements of section 1 of the Bankruptcy Amendment Act, 1868.

In the case of a contested deed, the debtor is to be assumed to know the particulars of his creditor's claim (which he should obtain by summons if they are not known to him), and he should be prepared with witnesses in the same manner as if he were defending an action by the creditor to recover the amount of the debt. *Drew* v. *Myers*, 19 L. T. N. S. 740.

492. (Divisions Nos. III., X.)—A rule was obtained to set aside a *ca. sa.* issued in the cause, and to stay all proceedings thereunder (unless the leave of the Court of Bankruptcy should be obtained), upon the ground that the defendant was protected from execution by the certificate of the registration of a deed of composition of the 13th of September, 1864.

It appeared from the affidavits on which the rule was obtained, that the deed was a deed of composition under the Bankruptcy Act, 1861, s. 192, but as it contained no release by the creditors, it could not have been pleaded in bar to the action, although made before action brought.

From the affidavits filed, on showing cause, it appeared that the requisite assents of creditors as to value had been calculated on the principle of excluding from the calculation the amount of secured debts, and the assents were not sufficient in value if the secured debts were taken into account. There was a proviso in the deed itself that if it were not signed or assented to by the statutable majority of creditors it should be void.

Upon showing cause it was contended that although the certificate of the registration of a deed of composition under section 192 was a protection to the sheriff under section 198, and justified the release of the debtor, yet the certificate did not prevent the execution being "available" under section 198 if the deed was in fact void, and, on the authority of *Baker* v. *Painter* (L. R. 2 C. P. 293, *supra*, No. 283), that if there were any doubt upon the construction of the statute alone, the proviso in the present deed put the matter beyond doubt.

In support of the rule it was argued that the Bankruptcy Amendment Act, 1868, s. 3 (which excludes the amount of secured debts) was retrospec-

tive, and that, therefore, creditors to the requisite amount had assented to the deed, and consequently that the deed was valid.

The Court (Mellor and Hannen, JJ.) were clearly of opinion that the Bankruptcy Amendment Act, 1868, s. 3, was not retrospective, and discharged the rule with costs. Mellor, J., also protested against this being drawn into a precedent that the Court would entertain such a motion where the *ca. sa.* had only been issued, but no arrest made under it.

See as to this point, *Harding* v. *Inskip*, L. R. 4 Ex. 80. *Ellis* v. *McCormick*, 4 W. N. 44.

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